



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

वीरवार, 26 सितम्बर, 2024 / 04 आश्विन, 1946

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

the 24th April, 2024

No:LEP-A003/28/2021-LEP(Awards) L.C.Shimla.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor of Himachal Pradesh is pleased

to order the publication of awards of the following cases announced by the Presiding Judge, Labour Court, Shimla on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* “e-Gazette” :—

Sl. No.	Case No.	Petitioner	Respondent	Date of Award/Order
1.	Ref. 31/2019	Sh. Amar Bahadur	The commissioner M.C. Shimla	02-03-2024
2.	Ref. 175/2020	Sh. Pankaj	M/s Progressive Industries (P) Ltd.	04-03-2024
3.	Ref.176/2020 20	Sh. Mange Ram	M/s Progressive Industries (P) Ltd.	05-03-2024
4.	Ref. 177/2020	Sh. Akhil	M/s Progressive Industries (P) Ltd.	06-03-2024
5.	Ref. 04/2022	Sh. Gurdial Singh	M/s Him Teknoforge Ltd.	06-03-2024
6.	Ref. 164/2022	Sh. Kulvinder Rana	The Registrar, MMU, Solan	07-03-2024
7.	Ref. 85/2023	Sh. Magga Ram	M/s Sanctus Global Formulations Ltd.	09-03-2024
8.	App. 66/2023	Sh. Pawan Thakur	M/s Kanha Biogenetics	09-03-2024
9.	Ref. 196/2022	Sh. Shiv Onkar	M/s S.C. Johnson Products Ltd.	09-03-2024
10.	Ref. 32/2019	Sh. Subhash Chand	The D.F.O. Shimla	12-03-2024
11.	Ref. 06/2024	Ms. Uma Devi	M/s Sona Enterprises & Anr.	12-03-2024
12.	Ref. 152/2019	Sh. Sohan Lal	M/s Symbiosis Pharmaceuticals	13-03-2024
13.	Ref. 106/2023	Smt. Balbir Kaur	M/s Theon Pharmaceuticals Ltd.	13-03-2024
14.	Ref. 117/2020	Ms. Babita Devi	M.D. M.s Commed Chemicals Ltd.	14-03-2024
15.	Ref. 218/2020	Ms. Naseema Begam	M.D. M.s Commed Chemicals Ltd.	14-03-2024
16.	Ref. 120/2019	Sh. Madan Lal	The XEN, HPSEB, Sapron	15-03-2024
17.	Ref. 92/2023	Ms. Alka Devi	M/s Procter & Gamble & Anr.	30-03-2024
18.	Ref. 186/2022	Sh. Sunny Kashyap	M/s Ruvi Tech, Solan	30-03-2024

By order,

Sd/-
 (DR. ABHISHEK JAIN, IAS),
Secretary (Lab. & Emp.).

**IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

**Reference Number : 31 of 2019
Instituted on : 11.01.2019
Decided on : 02.03.2024**

Amar Bahadur s/o Shri Bal Bahadur, c/o Padam Singh Building, Dhingoo Bawri, Shimla-6.
...*Petitioner.*

VERSUS

The Commissioner, Municipal Corporation Shimla, H.P.

...*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri G.N. Verma, Advocate
For the Respondent : Shri S.S. Roach, Advocate

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Amar Bahadur s/o Shri Bal Bahadur C/o Padam Singh Building, Dhingoo Bawri, Shimla-6 by the Commissioner, Municipal Corporation Shimla, H.P w.e.f. September, 2017 allegedly without complying with the provisions of Industrial Disputes Act, 1947, is legal and justified? If not, what relief including reinstatement, seniority, amount of back-wages, past service benefits and compensation the above aggrieved worker is entitled to from the above employer?”

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged as a daily waged beldar with the B&R Department of the respondent in May, 2002. He worked continuously as such till September, 2017. His services were terminated by Junior Engineer (B&R) MC Shimla without giving any notice, as required under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter to be referred as Act) and without conducting enquiry. He had visited the respondent for his reengagement, but all in vain. As such, the petitioner has challenged his termination. He raised an industrial dispute, which led to the present reference.

3. On notice, the respondent appeared and filed the reply.

4. The claim was contested by the respondent by filing a written statement. It is admitted that the petitioner had worked as a daily wager continuously since 2002. However, it is denied that he had worked till September, 2017. It is alleged that he had left the job of his own in the year 2016. He had not completed the requisite 240 days of working in each calendar year since 2008, hence, he is not entitled to any relief. Since, the respondent had never terminated the services of the petitioner, the question of application of the provisions of the Act does not arise. The respondent prayed for the dismissal of the claim petition.

5. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 31.12.2019.

1. Whether the termination of the petitioner w.e.f. September, 2017 is violative of the provisions of Section 25-F of the Industrial Disputes Act, as alleged? If so, to what relief the petitioner is entitled to? ..OPP

2. Whether the petitioner had himself abandoned the job, as alleged, if so its effects thereto? ..OPR

3. Relief.

7. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

8. Arguments of the learned Counsel for the parties heard and records gone through. Written arguments on behalf of the petitioner have also been gone through by me.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Negative

Issue No. 2 : No

Relief : Reference is answered in the negative as per operative part of award.

REASONS FOR FINDINGS

Issues No. 1& 2

10. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

11. In support of his case, Shri Amar Bahadur (petitioner) stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, wherein he reiterated on oath the contents of the petition/statement of claim in its entirety. He also tendered in evidence copy of demand notice as Ex. PW-1/B and postal receipts as Ex. PW-1/C.

12. In cross-examination, he feigned ignorance as to the number of days he had worked with the respondent w.e.f. 2008. He denied that he had been informed by the Junior Engineer that his work was not upto the mark. He specifically denied that he had not completed 240 days of working in a calendar year.

13. Conversely, the respondent examined Shri Praveen Zinta, Junior Engineer (B&R), as RW-1. In his chief examination by way of affidavit Ex. RW-1/A, he corroborated on oath the

contents of the reply filed by the respondent. He also tendered in evidence authority letter Ex. R-1 and mandays chart Ex. R-2.

14. In cross-examination, he admitted that the petitioner had worked under him. He feigned ignorance as to whether any notice had been issued to the petitioner. He admitted that Ex. R-2 pertains to the petitioner. He denied that the mandays chart is not correct as per the record. He further denied that the petitioner had been terminated from service forcefully. Volunteered that, the petitioner had abandoned the job himself. He admitted that no notice for resumption of duties has been given to the petitioner.

15. From the pleadings and evidence of the parties, the undisputed fact is that the petitioner had been engaged as a daily waged worker in the month of May, 2002 by the respondent. It is claimed by the petitioner that he had worked continuously for about fifteen years and thereafter his services had orally been terminated by the respondent. The respondent denied the fact and claimed that the petitioner had abandoned the job. He had never completed 240 days in any calendar year from the year 2008 onwards.

16. It is well known that abandonment has to be proved by the employer like any other fact. Therefore, the burden of proving of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as *Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875* that voluntary abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Similarly, in case titled as *State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286*, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Praveen Zinta, Junior Engineer (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, 'animus' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such 'animus' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

17. It was contended by the learned counsel for respondent that the petitioner had not worked for 240 days or more in the preceding twelve calendar months from the date of his alleged termination, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had worked for more than 240 days in each calendar year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

18. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for 240 days, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In *R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106*, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

19. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place during the month of September, 2017. The petitioner has failed to establish by leading cogent and satisfactory evidence on record that he had completed 240 days of continuous work in a block of twelve calendar months preceding the date/month of his retrenchment, i.e September, 2017, as envisaged under Section 25-B of the Act. Moreover, the respondent has placed on record the mandays chart of the petitioner as Ex. R-2. It was suggested to RW-1 Shri Praveen Zinta by the petitioner that Ex. R-2 pertains to him. He admitted the suggestion. The putting of the suggestion and its admission by RW-1 Shri Praveen Zinta leaves no doubt in mind that the petitioner admits the mandays chart to be pertaining to him. The mandays chart clearly shows that from the year 2008 onwards till the year 2016, the petitioner had been working with the respondent only for 78 days, 196 days, 131 days, 223 days, 179 days, 54 days, 204 days, 170 days and 60 days respectively. Manifest from the aforesaid mandays chart, Ex. R-2, the petitioner had not completed 240 working days in a block of 12 calendar months preceding his alleged termination. It has been laid down by the Hon'ble Supreme Court in case titled as **Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

20. The petitioner in the statement of claim has nowhere maintained that at the time his services were terminated, persons junior to him were retained in service by the respondent. Even otherwise, there is no seniority list placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent. Therefore, there can be no violation of the provisions of Section 25-G of the Act by the respondent.

21. The petitioner has also not pleaded that the respondent had violated the provisions of Section 25-H of the Act. The statement of claim is nonexistent in the names of the persons who were allegedly appointed by the respondent after his retrenchment. There is also no ocular evidence on record to show that new/fresh hands had been appointed by the respondent after his alleged termination. Hence, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

22. In all fairness, the learned counsel for the petitioner placed reliance upon "**Manager, Reserve bank of India, Bangalore Vs. S.Mani (2005) 5 SCC 100**", "**R.M Yelletti Vs. The Executive Assistant Engineer, Appeal (Civil) 5124 of 2004 decided on 07.11.2005**", and "**Jeetubha Khansangji Jadeja Vs. Kutchh District Panchyat 2022 Live Law (SC) 797**". For the reasons mentioned above, the petitioner cannot derive any advantage from what has been decided in these cases.

23. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, issue no.1 is decided in the negative and against the petitioner, whereas issue no.2 is decided in the negative and against the respondent.

RELIEF

24. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the

appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of March, 2024.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Shimla.

**BEFORE YOGESH JASWAL, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 175 of 2020
Instituted on : 20.08.2020
Decided on : 04.03.2024

Pankaj s/o Shri Suresh Kumar, r/o Village Nagla Rajputana, Post Office Lalpur, Tehsil Naraingarh, District Ambala, Haryana.

...Petitioner.

VERSUS

The Factory Manager, Progressive Industries Pvt. Ltd., Village Ogli, Kala-Amb, Tehsil Nahan, District Sirmaur, H.P.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri Shauray Sharma, Advocate
For the Respondent : Ms. Vandana, Advocate

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Pankaj s/o Shri Suresh Kumar r/o Village Nagla Rajputana, Post Office, Lalpur, Tehsil Naraingarh, District Ambala, Haryana by the Factory Manager, Progressive Industries Pvt. Ltd., Village Ogli, Kala-Amb, Tehsil Nahan, District Sirmaur, H.P w.e.f. 16.08.2019 without complying with the provisions of Industrial Disputes Act, 1947, is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation, the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was appointed as Quality Inspector by the respondent on 20.07.2016. He continued to work as such with

the respondent to the satisfaction of his superiors. No show cause notice or any complaint regarding his work and conduct had been filed. He had been getting a salary of ₹ 16,800/- per month. He had been contributing towards ESI. He had completed 240 days in each calendar year, but his services were terminated w.e.f. 15.08.2019 without following any due process of law. Neither any enquiry had been conducted against him nor the process followed, as prescribed under the Industrial Disputes Act, 1947 (hereinafter referred as the Act). Juniors to him, namely, Harish Kumar and Sushil Kumar had been retained by the respondent. As such, the petitioner has challenged his termination. He raised an industrial dispute, which led to the present reference.

3. On notice, the respondent appeared and filed the reply.

4. The petition was contested by the respondent on taking preliminary objections regarding lack maintainability, jurisdiction and estoppel. On merits, it is not disputed that the petitioner was engaged as Quality Inspector by the respondent and that he had been contributing towards ESI. It is denied that the petitioner had worked with the respondent to his satisfaction. It is alleged that the petitioner was habitual in absenting himself without any intimation and leave application. He had been reprimanded orally many a times. It is denied that the petitioner was getting a salary of ₹ 16,800/-. It is claimed that his last drawn salary was ₹15,200/-. It is alleged that the petitioner being a Quality Control Inspector was assigned the job of checking the quality of the LPG Cylinders manufactured at the unit, as per prescribed parameters. In addition, he had been authorized to take care of the client's concerns regarding the quality of LPG Cylinders supplied. It is denied that the services of the petitioner were terminated w.e.f. 15.08.2019. He himself had absented from work w.e.f. August, 2019. He had been asked to join his duties several times, but to no effect. The question of holding enquiry against him, following the procedure as prescribed under the Act and retaining his juniors is not applicable in the present case as the petitioner had left the employment without any intimation or sanctioned leave. By denying the other averments of the petition, it was claimed that the petition in hand be dismissed.

5. No rejoinder was filed by the petitioner.

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 24.06.2022:

1. Whether the termination of the petitioner by the respondent w.e.f. 16.08.2019 without complying with the provisions of the Industrial Disputes Act, is illegal and unjustified, as alleged? If yes, what relief the petitioner is entitled to? *OPP.....*

2. Whether the claim petition is not maintainable in the present form, as alleged? *..OPR*

3. Relief.

7. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

8. Arguments of the learned Counsel for the parties heard and records gone through.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.2 : Negative

Relief : Reference is answered in the negative, as per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 & 2

10. Being interlinked and correlated, both these issues are taken up together for discussion and decision.

11. In support of his case, Shri Pankaj (petitioner) stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, wherein he reiterated on oath the contents of the petition/statement of claim in its entirety. He also tendered in evidence demand notice Ex. PW-1/B, experience certificate Ex. PW-1/C, conciliation regarding demand notice Ex. PW-1/D, copy of detail of marks Mark PX-1 and copy of E-pehchan Card Mark PX-2.

12. In the cross-examination, he stated that he was working as Quality Control Inspector with the respondent. He was lastly drawing a salary of ₹ 8,500/- per month. He had left the job after intimating the General Manager Mr. D.P. Chauhan of the respondent on 15.08.2019. Volunteered that, his services had been terminated by the respondent for which, he had made the reference. However, he admitted that the respondent company had issued letters to him to rejoin his duties after August, 2019. Self-stated that the respondent company had not allowed him to enter inside the company gate. He denied that despite repeated requests from the respondent, he had not joined his services. He is not interested to rejoin the services with the respondent, at this stage. Presently, he is working with his brother at the shop of pesticides.

13. Conversely, the respondent examined Shri Amarjit Singh, its Managing Partner as RW-1. In his chief-examination by way of affidavit Ex. RW-1/A, he corroborated on oath the contents of the reply filed by the respondent. He also tendered in evidence show cause notices Ex. RW-1/B to Ex. RW-1/E.

14. In cross-examination, he has stated that the petitioner was engaged on a monthly salary of ₹ 15,200/. The company is not willing to re-engage the petitioner. Volunteered that, other persons have been recruited. He denied that the petitioner was terminated by the respondent in violation of the provisions of the Act. Self-stated that the petitioner had left the job himself. He admitted that the experience certificate had been issued by them. He also admitted that the petitioner had worked with honesty and sincerity. He specifically denied that the petitioner was not allowed to enter the gate of the factory on 15.08.2019.

15. The respondent has claimed that as the petitioner is not a "workman" as per the Act, the present petition is not maintainable. Before advertizing any further it would be apposite to venture in to the legal aspect of the matter, as to whether the petitioner would fall within the terms of Section 2(s) of the Act. The Section reads as under: —

"Workman" means any person (including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or

whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, function mainly of a managerial nature.]

16. The definition itself stipulates as to who a workman would be. However, clauses-1 to IV are the exceptions which have been carved out to say that the following would not fall within the category of a “workman” (in our case clause-III) and IV are relevant to be noticed. The bare reading of the section shows that a person who is employed in a managerial or administrative capacity would not fall within the term of workman and the person who is employed in a supervisory capacity and draws wages exceeding ₹ 10,000/- per mensem and discharges functions mainly of a managerial nature would also not come within the purview of the term “workman”.

17. Viewed in this context a bare reading of the pleadings as well as the testimony of RW-1 Shri Amarjit Singh, would show that the petitioner was engaged for unloading of new empty cylinders and other works at IOCL Bottling Plant Kalyani (W.B). The certificate issued by the respondent as Ex. PW-1/C also states as such. Manifest that the primary duty of the petitioner was to unload new empty cylinders and to do other works at the Bottling Plant and his last drawn salary was ₹ 15,200/. So, the petitioner, as per the own case of the respondent, was never employed in a managerial or administrative capacity. The petitioner was also not working in a supervisory capacity.

18. As far back in the year 2006, the Hon’ble Supreme Court in “Anand Regional Coop. Oil Seeds Growers Union Ltd. Vs. Shailesh Kumar Harshad Bhai Shah (2006) 6 SCC 548” has held that:

“In determining the nature of work, essence of the matter should be considered and the designation of the employee or the name assigned to him should not be given due importance. The primary duty performed by the person is to be given due importance. For determining the question as to whether a person employed in a industry is a workman or not, not only the nature of the work performed by him but also the terms of the appointment in the job performed are relevant consideration. Being incharge of the section alone and that too shall one relating to Quality control would not answer the text”.

19. It is now trite that the issue as to whether an employee answers the description of a workman or not has to be determined on the basis of conclusive evidence on record. Reference may be made in this behalf to a judgment of the Hon’ble Supreme Court titled as “Sonepat Cooperative Sugar Mills Ltd Vs. Ajit Singh (2005) 3 SCC 232”.

20. The perusal of the evidence on record discussed hereinabove conclusively goes to show that oblivious of the pay package of the petitioner, he does fall within the purview of the term “workman” as has been detailed above.

21. A plea was taken by the respondent that the petitioner had left the job of his own free will and volition. It is well known that abandonment has to be proved like any other fact by the respondent/employer. However, in the instant case, the petitioner himself while under cross-examination has categorically admitted that he had left the job after intimating the General Manager Mr. D.P. Chauhan of the respondent company on 15.08.2019. He also clearly admitted that letters had been issued to him by the respondent to re-join his duties after August, 2019. Such letters have been placed and exhibited on record by the respondent as Ex. RW-1/B (also Ex. RW-1/C) and Ex. RW-1/D (also Ex. RW-1/E). It is clear from the perusal of these letters that the respondent had made requests to the petitioner to report back on duty. However, the petitioner instead of resuming his duties, as per his own admission made at one point of his cross-examination is not interested to re-join the services of the respondent. The 'animus' to abandon, thus, is shown to exist to make out a case of abandonment. Thus, the plea of abandonment put forth by the respondent/employer is established from the own admissions made by the petitioner himself.

22. Since, the petitioner is shown to have himself abandoned the job, he is not entitled to any service benefits. Hence, issue no.1 is answered in the negative and against the petitioner, while issue no.2 is also answered in the negative, but against the respondent.

RELIEF

23. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of March, 2024.

Sd/-
 (YOGESH JASWAL),
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Shimla (H.P.).

BEFORE YOGESH JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 176 of 2020
Instituted on : 21.08.2020
Decided on : 05.03.2024

Mange Ram s/o Shri Manpal, r/o Village Azizpur Kalan, Tehsil Yamunangar District Yamunanagar, Haryana.

...Petitioner.

VERSUS

The Factory Manager, Progressive Industries Pvt. Ltd., Village Ogli, Kala-Amb, Tehsil Nahan, District Sirmaur, H.P.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri Shauray Sharma, Advocate
 For the Respondent : Ms. Vandana, Advocate

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Mange Ram s/o Shri Manpal r/o Village Azizpur Kalan, Tehsil Yamunangar District Yamunanagar, Haryana by the Factory Manager, Progressive Industries Pvt. Ltd., Village Ogli, Kala-Amb, Tehsil Nahan, District Sirmaur, H.P w.e.f. 16.08.2019 without complying with the provisions of Industrial Disputes Act, 1947, is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation, the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was appointed as Quality Inspector by the respondent in the month of August, 2016 and thereafter his services had been confirmed on 01.03.2017. He continued to work as such with the respondent to the satisfaction of his superiors. No show cause notice or any complaint regarding his work and conduct had been filed. He had been getting a salary of ₹ 11,500/- per month. He had been contributing towards EPF. He had completed 240 days in each calendar year, but his services were terminated w.e.f. 15.08.2019 without following any due process of law. Neither any enquiry had been conducted against him nor the process followed, as prescribed under the Industrial Disputes Act, 1947 (hereinafter referred as the Act). Juniors to him, namely, Harish Kumar and Sushil Kumar had been retained by the respondent. As such, the petitioner has challenged his termination. He raised an industrial dispute, which led to the present reference.

3. On notice, the respondent appeared and filed the reply.

4. The petition was contested by the respondent taking preliminary objections regarding lack maintainability, jurisdiction and estoppel. On merits, it is not disputed that the petitioner was engaged as Quality Inspector by the respondent and that he had been contributing towards ESI. It is denied that the petitioner had worked with the respondent to his satisfaction. It is alleged that the petitioner was habitual in absenting himself without any intimation and leave application. He had been reprimanded orally many a times. It is denied that the petitioner was getting a salary of ₹ 11,500/. It is claimed that his last drawn salary was ₹8,000/. It is alleged that the petitioner being a Quality Control Inspector was assigned the job of checking the quality of the LPG Cylinders manufactured at the unit, as per prescribed parameters. In addition, he had been authorized to take care of the client's concerns regarding the quality of LPG Cylinders supplied. It is denied that the services of the petitioner were terminated w.e.f. 15.08.2019. He himself had absented from work w.e.f. August, 2019. He had been asked to join his duties several times, but to no effect. The question of holding enquiry against him, following the procedure as prescribed under the Act and retaining his juniors is not applicable in the present case as the petitioner had left the employment without any intimation or sanctioned leave. By denying the other averments of the petition, it was claimed that the petition in hand be dismissed.

5. No rejoinder was filed by the petitioner.

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 24.06.2022:

1. Whether the termination of the petitioner by the respondent w.e.f. 16.08.2019 without complying with the provisions of the Industrial Disputes Act, is illegal and unjustified, as alleged? If yes, what relief the petitioner is entitled to?

OPP.....

2. Whether the claim petition is not maintainable in the present form, as alleged?

OPR.....

3. Relief.

7. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

8. Arguments of the learned Counsel for the parties heard and records gone through.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1 : Negative

Issue No. 2 : Negative

Relief part of the Award. : Reference is answered in the negative, as per operative

REASONS FOR FINDINGS

Issues No. 1 & 2

10. Being interlinked and correlated, both these issues are taken up together for discussion and decision.

11. In support of his case, Shri Mange Ram (petitioner) stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, wherein he reiterated on oath the contents of the petition/statement of claim in its entirety. He also tendered in evidence demand notice Ex. PW-1/B, mechanical engineer diploma Mark RX-1, I.D Card Mark PX-2, E-pehchan Card Mark PX-3 and notice issued by the Government Mark PX-4.

12. In the cross-examination, he stated that he was working as Quality Control Inspector with the respondent. He was lastly drawing a basic salary of ₹ 8,500/- per month. He had left the job after intimating the General Manager Mr. D.P. Chauhan of the respondent on 15.08.2019. Volunteered that, his services had been terminated by the respondent for which, he had made the reference. However, he admitted that the respondent company had issued letters to him to rejoin his duties after August, 2019. Self-stated that the respondent company had not allowed him to enter inside the company gate. He denied that despite repeated requests from the respondent, he had not joined his services. He is not interested to rejoin the services with the respondent, at this stage. Presently, he is indulged in his own agricultural activities in his fields.

13. Conversely, the respondent examined Shri Amarjit Singh, its Managing Partner as RW-1. In his chief-examination by way of affidavit Ex. RW-1/A, he corroborated on oath the contents of the reply filed by the respondent. He also tendered in evidence show cause notice Mark RX-1.

14. In cross-examination, he has stated that the petitioner was engaged on a monthly salary of ₹ 8,000/- . The company is not willing to re-engage the petitioner. Volunteered that, other persons have been recruited. He denied that the petitioner was terminated by the respondent in violation of the provisions of the Act. Self-stated that the petitioner had left the job himself. He admitted that the petitioner had worked with honesty and sincerity. He specifically denied that the petitioner was not allowed to enter the gate of the factory on 15.08.2019.

15. The respondent has claimed that as the petitioner is not a “workman” as per the Act, the present petition is not maintainable. Before advertizing any further it would be apposite to venture in to the legal aspect of the matter, as to whether the petitioner would fall within the terms of Section 2(s) of the Act. The Section reads as under:—

“Workman” means any person (including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, function mainly of a managerial nature.]

16. The definition itself stipulates as to who a workman would be. However, clauses-1 to IV are the exceptions which have been carved out to say that the following would not fall within the category of a “workman” (in our case clause-III) and IV are relevant to be noticed. The bare reading of the section shows that a person who is employed in a managerial or administrative capacity would not fall within the term of workman and the person who is employed in a supervisory capacity and draws wages exceeding ₹ 10,000/- per mensem and discharges functions mainly of a managerial nature would also not come within the purview of the term “workman”.

17. Viewed in this context a bare reading of the pleadings as well as the testimony of RW-1 Shri Amarjit Singh, would show that the petitioner being Quality Control Inspector was assigned the job of checking the quality of LPG Cylinder manufactured at the respondent’s unit as per the prescribed parameters. Manifest that the primary duty of the petitioner was to check the quality of cylinders and to do other works at the unit and his last drawn salary was ₹ 8,000/- . So, the petitioner, as per the own case of the respondent, was never employed in a managerial or administrative capacity. The petitioner was also not working in a supervisory capacity

18. As far back in the year 2006, the Hon'ble Supreme Court in "Anand Regional Coop. Oil Seeds Growers Union Ltd. Vs. Shailesh Kumar Harshad Bhai Shah (2006) 6 SCC 548" has held that:

"In determining the nature of work, essence of the matter should be considered and the designation of the employee or the name assigned to him should not be given due importance. The primary duty performed by the person is to be given due importance. For determining the question as to whether a person employed in a industry is a workman or not, not only the nature of the work performed by him but also the terms of the appointment in the job performed are relevant consideration. Being incharge of the section alone and that too shall one relating to Quality control would not answer the text".

19. It is now trite that the issue as to whether an employee answers the description of a workman or not has to be determined on the basis of conclusive evidence on record. Reference may be made in this behalf to a judgment of the Hon'ble Supreme Court titled as "Sonepat Cooperative Sugar Mills Ltd Vs. Ajit Singh (2005) 3 SCC 232".

20. The perusal of the evidence on record discussed hereinabove conclusively goes to show that oblivious of the pay package of the petitioner, he does fall within the purview of the term "workman" as has been detailed above.

21. A plea was taken by the respondent that the petitioner had left the job of his own free will and volition. It is well known that abandonment has to be proved like any other fact by the respondent/employer. However, in the instant case, the petitioner himself while under cross-examination has categorically admitted that he had left the job after intimating the General Manager Mr. D.P. Chauhan of the respondent company on 15.08.2019. He also clearly admitted that letter had been issued to him by the respondent to re-join his duties after August, 2019. A letter has been placed and marked on record by the respondent as Mark RX-1. It is clear from the perusal of this letter that the respondent had made requests to the petitioner to report back on duty. However, the petitioner instead of resuming his duties, as per his own admission made at one point of his cross-examination is not interested to re-join the services of the respondent. The 'animus' to abandon, thus, is shown to exist to make out a case of abandonment. Thus, the plea of abandonment put forth by the respondent/employer is established from the own admissions made by the petitioner himself.

22. Since, the petitioner is shown to have himself abandoned the job, he is not entitled to any service benefits. Hence, issue no.1 is answered in the negative and against the petitioner, while issue no.2 is also answered in the negative, but against the respondent.

RELIEF

23. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of March, 2024.

Sd/-
 (YOGESH JASWAL),
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Shimla (H.P.).

**BEFORE YOGESH JASWAL, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

**Reference Number : 177 of 2020
Instituted on : 21.08.2020
Decided on : 06.03.2024**

Akhil s/o Shri Kuldeep Sethi, r/o Village Sadhura, Tehsil Bilaspur, District Yamunanagar, Haryana.

...Petitioner.

VERSUS

The Factory Manager, Progressive Industries Pvt. Ltd., Village Ogli, Kala-Amb, Tehsil Nahan, District Sirmaur, H.P.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri Shauray Sharma, Advocate
For the Respondent : Ms. Vandana, Advocate

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Akhiol s/o Shri Kuldeep Sethi, r/o Village Sadhura, Tehsil Bilaspur, District Yamunanagar, Haryana by the Factory Manager, Progressive Industries Pvt. Ltd., Village Ogli, Kala-Amb, Tehsil Nahan, District Sirmaur, H.P w.e.f. 16.08.2019 without complying with the provisions of Industrial Disputes Act, 1947, is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation, the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was appointed as Quality Inspector by the respondent 10.08.2017. He continued to work as such with the respondent to the satisfaction of his superiors. No show cause notice or any complaint regarding his work and conduct had been filed. He had been getting a salary of ₹16,800/- per month. He had been contributing towards ESI. He had completed 240 days in each calendar year, but his services were terminated w.e.f. 15.08.2019 without following any due process of law. Neither any enquiry had been conducted against him nor the process followed, as prescribed under the Industrial Disputes Act, 1947 (hereinafter referred as the Act). Juniors to him, namely, Harish Kumar and Sushil Kumar had been retained by the respondent. As such, the petitioner has challenged his termination. He raised an industrial dispute, which led to the present reference.

3. On notice, the respondent appeared and filed the reply.

4. The petition was contested by the respondent taking preliminary objections regarding lack maintainability, jurisdiction and estoppel. On merits, it is denied that the petitioner was

engaged as Quality Inspector by the respondent. It is alleged that the petitioner had worked with the respondent as Assistant Quality Control Inspector. It is alleged that the petitioner was habitual in absenting himself without any intimation and leave application. He had been reprimanded orally many a times. It is denied that the petitioner was getting a salary of ₹ 16,800/- . It is claimed that his last drawn salary was ₹7,500/- . It is alleged that the petitioner being an Assistant Quality Control Inspector was assigned the job of checking the quality of the LPG Cylinders manufactured at the unit, as per prescribed parameters. In addition, he had been authorized to take care of the client's concerns regarding the quality of LPG Cylinders supplied. It is denied that the services of the petitioner were terminated w.e.f. 15.08.2019. He himself had absented from work w.e.f. August, 2019. He had been asked to join his duties several times, but to no effect. The question of holding enquiry against him, following the procedure as prescribed under the Act and retaining his juniors is not applicable in the present case as the petitioner had left the employment without any intimation or sanctioned leave. By denying the other averments of the petition, it was claimed that the petition in hand be dismissed.

5. No rejoinder was filed by the petitioner.

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 24.06.2022:

1. Whether the termination of the petitioner by the respondent w.e.f. 16.08.2019 without complying with the provisions of the Industrial Disputes Act, is illegal and unjustified, as alleged? If yes, what relief the petitioner is entitled to?

OPP.....

2. Whether the claim petition is not maintainable in the present form, as alleged?

OPR.....

3. Relief.

7. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

8. Arguments of the learned Counsel for the parties heard and records gone through.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1 : Negative

Issue No.2 : Negative

Relief : Reference is answered in the negative, as per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 & 2

10. Being interlinked and correlated, both these issues are taken up together for discussion and decision.

11. In support of his case, Shri Pankaj (petitioner) stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, wherein he reiterated on oath the contents of the petition/statement of claim in its entirety. He also tendered in evidence demand notice Ex. PW-1/B, experience certificate Ex. PW-1/C, Bachelore of commerce Mark RX-1, E-pehchan Card Mark PX-2 and notice issued by Government Mark PX-3.

12. In the cross-examination, he stated that he was working as Quality Control Inspector with the respondent. He was lastly drawing a salary of ₹ 16,800/- per month. He had left the job after intimating the General Manager Mr. D.P. Chauhan of the respondent on 15.08.2019. Volunteered that, his services had been terminated by the respondent for which, he had made the reference. However, he admitted that the respondent company had issued letters to him to rejoin his duties after August, 2019. Self-stated that the respondent company had not allowed him to enter inside the company gate. He denied that despite repeated requests from the respondent, he had not joined his services. He is not interested to rejoin the services with the respondent, at this stage. Presently, he is attached with a Chartered Accountant as his Assistant.

13. Conversely, the respondent examined Shri Amarjit Singh, its Managing Partner as RW-1. In his chief-examination by way of affidavit Ex. RW-1/A, he corroborated on oath the contents of the reply filed by the respondent. He also tendered in evidence show cause notices Ex. RW-1/B to Ex. RW-1/E.

14. In cross-examination, he has stated that the petitioner was engaged on a monthly salary of ₹ 7,500/-. The company is not willing to re-engage the petitioner. Volunteered that, other persons have been recruited. He denied that the petitioner was terminated by the respondent in violation of the provisions of the Act. Self-stated that the petitioner had left the job himself. He admitted that the petitioner had worked with honesty and sincerity. He specifically denied that the petitioner was not allowed to enter the gate of the factory on 15.08.2019.

15. The respondent has claimed that as the petitioner is not a “workman” as per the Act, the present petition is not maintainable. Before advertiring any further it would be apposite to venture in to the legal aspect of the matter, as to whether the petitioner would fall within the terms of Section 2(s) of the Act. The Section reads as under:—

“Workman” means any person (including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, function mainly of a managerial nature.]

16. The definition itself stipulates as to who a workman would be. However, clauses-1 to IV are the exceptions which have been carved out to say that the following would not fall within the category of a “workman” (in our case clause-III) and IV are relevant to be noticed. The bare reading of the section shows that a person who is employed in a managerial or administrative capacity would not fall within the term of workman and the person who is employed in a supervisory capacity and draws wages exceeding ₹ 10,000/- per mensem and discharges functions mainly of a managerial nature would also not come within the purview of the term “workman”.

17. Viewed in this context a bare reading of the pleadings as well as the testimony of RW-1 Shri Amarjit Singh, would show that the petitioner being Assistant Quality Control Inspector was assigned the job of checking the quality of LPG Cylinder manufactured at the respondent's unit as per the prescribed parameters. The certificate issued by the respondent as Ex. PW-1/C also states as such. Manifest that the primary duty of the petitioner was to check the quality of cylinders and to do other works at the unit and his last drawn salary was ₹ 7,500/- So, the petitioner, as per the own case of the respondent, was never employed in a managerial or administrative capacity. The petitioner was also not working in a supervisory capacity

18. As far back in the year 2006, the Hon'ble Supreme Court in “Anand Regional Coop. Oil Seeds Growers Union Ltd. Vs. Shailesh Kumar Harshad Bhai Shah (2006) 6 SCC 548” has held that:—

“In determining the nature of work, essence of the matter should be considered and the designation of the employee or the name assigned to him should not be given due importance. The primary duty performed by the person is to be given due importance. For determining the question as to whether a person employed in a industry is a workman or not, not only the nature of the work performed by him but also the terms of the appointment in the job performed are relevant consideration. Being incharge of the section alone and that too shall one relating to Quality control would not answer the text”.

19. It is now trite that the issue as to whether an employee answers the description of a workman or not has to be determined on the basis of conclusive evidence on record. Reference may be made in this behalf to a judgment of the Hon'ble Supreme Court titled as “Sonepat Cooperative Sugar Mills Ltd Vs. Ajit Singh (2005) 3 SCC 232”.

20. The perusal of the evidence on record discussed hereinabove conclusively goes to show that oblivious of the pay package of the petitioner, he does fall within the purview of the term “workman” as has been detailed above.

21. A plea was taken by the respondent that the petitioner had left the job of his own free will and volition. It is well known that abandonment has to be proved like any other fact by the respondent/employer. However, in the instant case, the petitioner himself while under cross-examination has categorically admitted that he had left the job after intimating the General Manager Mr. D.P. Chauhan of the respondent company on 15.08.2019. He also clearly admitted that letters had been issued to him by the respondent to re-join his duties after August, 2019. Such letters have been placed and exhibited on record by the respondent as Ex. RW-1/B (also Ex. RW-1/C) and Ex. RW-1/D (also Ex. RW-1/E). It is clear from the perusal of these letters that the respondent had made requests to the petitioner to report back on duty. However, the petitioner instead of resuming his duties, as per his own admission made at one point of his cross-examination is not interested to re-join the services of the respondent. The ‘animus’ to abandon, thus, is shown to exist to make out a case of abandonment. Thus, the plea of abandonment put forth by the respondent/employer is established from the own admissions made by the petitioner himself.

22. Since, the petitioner is shown to have himself abandoned the job, he is not entitled to any service benefits. Hence, issue no.1 is answered in the negative and against the petitioner, while issue no.2 is also answered in the negative, but against the respondent.

RELIEF

23. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of March, 2024.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Shimla (H.P.).

BEFORE YOGESH JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 04 of 2022
Instituted on : 01.01.2022
Decided on : 06.03.2024

Gurdial Singh, r/o 21A/B2 Dharampur Colony, Pinjore, P.O. Pinjore, Tehsil Kalka, District Panchkula, Haryana.

...Petitioner

VERSUS

The Occupier/ Factory Manager, M/S Him Teknoforge Ltd., Village Billanwali, Tehsil Baddi, District Solan, H.P.

...Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo
For the Respondent : Sh. Amit Bharota, Advocate

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether Shri Gurdial Singh, r/o 21A/B2 Dharampur Colony, Pinjore, P.O. Pinjore, Tehsil Kalka, District Punchkula, Haryana who was working as Asstt. Manager in M/S Him Teknoforge Ltd., Village Billanwali, Tehsil Baddi, District Solan, H.P., falls under the definition of workman u/s 2 (s) of the Industrial Disputes Act, 1947? If yes, what relief, Sh. Gurdial Singh is entitled to? And if not, what its effects?”

“Whether the termination of Sh. Gurdial Singh, r/o 21A/B2 Dharampur Colony, Pinjore, P.O. Pinjore, Tehsil Kalka, District Punchkula, Haryana w.e.f. 08.05.2020 by the Employer/ Management i.e. the Occupier/ Factory Manager, M/s Him Teknoforge Ltd., Village Billanwali, Tehsil Baddi, District Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement of service, back wages, other consequential service benefits and compensation the above aggrieved workman is entitled to from, the above stated Employer/Management?”

2. The case was listed for appearance of the parties for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A; ”.

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

*“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex parte* and decide the reference application in the absence of the defaulting party.”*

5. Rule 22 reads thus:—

*“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex parte*.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”*

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

*“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex parte*.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board,*

Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the petitioner nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference firstly, it was required of the petitioner to show that he was a "workman", as provided under Section 2 (s) of the Industrial Disputes Act, 1947 and thereafter he had to plead and prove on record that the termination of his services w.e.f. 08.05.2020 was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner. At the risk of repetition the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for necessary action at its end and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of March, 2024.

Sd/-
 (YOGESH JASWAL),
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Shimla (H.P.).

**BEFORE YOGESH JASWAL, PRESIDING JUDGE,
 HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, CAMP AT SOLAN**

Reference Number : 164 of 2022
Instituted on : 20.05.2022
Decided on : 07.03.2024

Kulvinder Rana, s/o Shri Baldev Rana, VPO Mungal, Tehsil Jaisinghpur, District Kangra, HP.

...Petitioner.

VERSUS

The Registrar, Maharishi Markandeshwar Medical Colleges and Hospital, Village Lado, PO Sultanpur, Kumarhatti, Tehsil & District Solan, HP

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner :	Nemo
For the Respondent :	Sh. Alok Bhardwaj, Advocate

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the termination of services of Shri Kulvinder Rana, s/o Shri Baldev Rana, VPO Mungal, Tehsil Jaisinghpur, District Kangra (HP) by the Registrar, Maharishi Markandeshwar Medical College and Hospital, Village Lado, PO Sultanpur, Kumarhatti, Tehsil & District Solan, H.P. w.e.f. 06.07.2021 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, what relief including reinstatement of service, seniority, amount of back wages, past service benefits and compensation the above aggrieved workman is entitled to from, the above stated management/ employer?”

2. The case was listed for appearance of the parties for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;.”

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”

5. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour

Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

6. The State of Himachal Pradesh has also framed rules called "The Industrial Disputes Rules, 1974." Rule 25 thereof reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the workman nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services w.e.f. 06.07.2021 was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to reinstatement, any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for necessary action at its end and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of March, 2024.

Sd/-
 (YOGESH JASWAL),
 Presiding Judge,
 Industrial Tribunal-cum-Labour Court,
 Shimla, (Camp at Solan).

BEFORE NATIONAL LOK ADALAT TO BE HELD ON 09-03-2024**09-03-2024**

Present: Shri Nikhal Luma, Advocate for petitioner.
Shri Prateek Kumar, Advocate for respondent.

This case is taken up for conciliation before the Bench of National Lok Adalat. Conciliation tried and successful.

In view of the separate statement of the Ld. Counsel for the petitioner, recorded today before the Bench of National Lok Adalat, the present reference petition is dismissed being fully satisfied. The reference is answered accordingly. Let a copy of this order be sent to the appropriate Government for publication in the official gazette. File after completion, be consigned to records.

Announced:
09-03-2024

(Khushboo Sharma)
Member

(Hemlata)
Member

(Yogesh Jaswal)
Chairman

App. 66 of 2023

Sh. Pawan Thakur

V/s

M/s Kanha Biogenetics

BEFORE NATIONAL LOK ADALAT TO BE HELD ON 09-03-2024**09-03-2024**

Present: Ms. Ranjana Bali, Advocate for applicant.
Shri Prateek Kumar, Advocate for respondent.

This case is taken up for conciliation before the Bench of National LokAdalat. Conciliation tried and successful.

In view of the statement of the Ld. Counsel for the applicant recorded on 28.02.2024, the present claim petition is dismissed as withdrawn. Let a copy of this order be sent to the appropriate Government for publication in the official gazette. File after completion, be consigned to records.

Announced:
09.03.2024

(Khushboo Sharma)
Member

(Hemlata)
Member

(Yogesh Jaswal)
Chairman

Sh. Shiv Onkar

V/s

S.C. Johnson Products Ltd.

BEFORE NATIONAL LOK ADALAT TO BE HELD ON 09-03-2024

09-03-2024

Present: Shri Prateek Kumar, Advocate for petitioner.
Shri Deepak Thakur, Advocate for respondent.

This case is taken up for conciliation before the Bench of National Lok Adalat. Conciliation tried and successful.

In view of the separate statement of the Ld. Counsel for the petitioner, recorded today before the Bench of National Lok Adalat, the present reference petition is dismissed having becomes infructuous. The reference is answered accordingly. Let a copy of this order be sent to the appropriate Government for publication in the official gazette. File after completion, be consigned to records.

Announced:
09.03.2024

(Khushboo Sharma)
Member

(Hemlata)
Member

(Yogesh Jaswal)
Chairman

**IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE,
H.P. INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, SHIMLA**

**Reference No. : 32 of 2019
Date of Institution : 11.01.2019
Date of Decision : 13.03.2024**

Subhash Chand s/o Shri Chet Ram, r/o Village Baghar, PO Tachi, Tehsil Sunni, District Shimla, H.P.

....*Petitioner.*

Versus

The Divisional Forest Officer, Forest Division Shimla, District Shimla, H.P.

....*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	:	Ms. Reena Thakur, Adv.
For the Respondent	:	Sh. Manoj Sharma, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Subhash Chand S/o Shri Chet Ram, r/o Village Baghar, PO Tachi, Tehsil Sunni, District Shimla, H.P. w.e.f. 16.08.2017 by the Divisional Forest Officer, Forest Division Shimla, District Shimla, H.P. allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, with relief including reinstatement, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that initially he had been engaged as a daily rated beldar w.e.f. 01.05.2005. He had been posted at Bajhol and Bhagal Beats and thereafter he had worked at Sunni Bhajji Beat of Sunni Forest Range. Since, the date of his engagement, he had discharged his duties as assigned to him with full sincerity, honesty, devotion, missionary zeal as well as to the entire satisfaction of his superiors. He had worked continuously without any breaks and had completed 240 days in each calendar year. He had worked till 15.08.2017 and thereafter w.e.f. 16.08.2017, his services had been terminated without assigning any cogent and convincing reason. Neither any notice had been served upon him nor he had been paid the compensation, so the action of respondent in terminating his services is in violation of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred as the Act). No opportunity of being heard had been afforded to him. By retaining the juniors, namely, Om Parkash, Yog Raj, Ramesh, Thakur Dass, Hem Dass, Sita Devi and Rup Dass, the respondent had violated the principle of “last come first go”. As such, the petitioner has challenged his termination. The respondent had given fictional breaks to the petitioner so that he could not complete 240 days in each calendar year. He raised an industrial dispute, which led to the present reference.

3. On notice, the respondent appeared and filed the reply.

4. The statement of claim was contested raising preliminary objection regarding lack of maintainability. On merits, it is alleged that initially the petitioner had been engaged as a casual labourer for seasonal forestry works in Bhajji Range of Shimla Forest Division during the year 2005 and that at that time CAT PLAN KOL DAM Project was in progress. The petitioner had completed 240 days in the year 2006 and thereafter the Project was over and the petitioner used to come for work, as per his suitability. Except for the year 2006, he had not completed 240 working days from the year 2005 till 2011. The petitioner had worked on muster roll basis from the year 2005 to 2011 and thereafter he had worked on bill basis. It is denied that his services had orally been terminated on 16.08.2017 by the respondent. It is alleged that he had worked with the respondent as per availability of funds on bill basis. The services of the petitioner were never terminated, hence, there was no justification of serving any notice or paying compensation in lieu thereof to him. He had been given opportunity to report for work, but he deliberately ignored the request of the department. It is alleged that persons, namely, Nek Chand, Om Parkash and Tej Ram were re-engaged as per the orders of this Court, but Yog Raj, Ramesh and Thakur Singh are not juniors to the petitioner. As far as Smt. Sita Devi and Roop Dass, daily wagers are concerned, they were re-engaged on work as per the directions of Hon'ble High Court. Hence, it is prayed that the claim petition be dismissed.

5. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 02.08.2019.

1. Whether the termination of the petitioner w.e.f. 16.08.2017 is violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged? If so, to what relief the petitioner is entitled to?

OPP.....

2. Whether the claim petition is not maintainable due to delay and latches, as alleged? If so, its effect thereto?

OPR.....

3. Relief.

7. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

8. Arguments of the learned Counsel for the parties heard and records gone through.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Decided accordingly

Issue No. 2 : No

Relief : Reference is answered in the affirmative, as per operative part of the Award.

REASONS FOR FINDINGS

Issue No. 1

10. In support of his case, the petitioner examined Shri Devi Singh, Block Forest Officer as PW-1, who proved on record the seniority list as Ex. PW-1/A and the mandays chart of Ms. Sita Devi as Ex. PW-1/B.

11. In the cross-examination, he admitted that the petitioner had not completed 240 days in any year except 2006. He also admitted that the petitioner was still working with the department for seasonal works on bill basis. He admitted that no junior had been engaged after 2017.

12. Petitioner, namely, Subhash Chand appeared in the witness box as PW-2 and tendered in evidence his affidavit Ex. PW-2/A, wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence final seniority list of daily wagers, as it stood on 01.06.2017 as Mark P-1.

13. In the cross-examination, he denied that he had not completed 240 days in any calendar year, He also denied that he had been working with the department on seasonal basis, as per the availability of work. He further denied that he had not been disengaged by the department. It was also denied by him that no juniors have been re-engaged after him. He feigned ignorance that Nek Chand, Om Parkash, Tej Ram, Sita Devi and Rup Dass have been re-engaged as per the

directions of the Court. He denied that Yog Raj and Thakur Dass were not juniors to him. He further denied that he had only completed 240 days in the year 2006. He also denied that after the completion of Project only seasonal work was available. He denied that his services had never been disengaged by the respondent and he is still working. He denied that he is still working on bill basis with the respondent department.

14. Conversely, the respondent examined Shri Devi Singh, Deputy Ranger as RW-1, who has tendered in evidence his affidavit Ex. RW-1/A, wherein he has corroborated on oath the contents of the reply filed by the respondent. He also tendered in evidence mandays Chart Ex. RW-1/B, letter Ex. RW-1/C and notices Mark RX-1 to Mark RX-4.

15. In cross-examination, he admitted that the petitioner was engaged as beldar in the year 2005 and that he had worked continuously till 2011. Volunteered that, he had worked on seasonal basis. He denied that the petitioner had worked for 240 days in a calendar year. He further denied that the petitioner was terminated without any notice. He admitted that Ms. Sita Devi and Roop Dass, who are junior to the petitioner, had been re-engaged as per Court orders. He admitted that at serial no. 264 of seniority list, there is no entry in the column of remarks. He denied that the notification Ex. RW-1/C is not applicable in case of the petitioner. He denied that notices Mark RX-1 to Mark RX-4 had been prepared falsely.

16. In essence, the dispute does not per se relate to the termination simplicitor, but to the change in the condition of service of the petitioner, whereby the respondent is offering him work on bill basis w.e.f. the year 2012. Though, technically the action of the respondent in changing the working conditions w.e.f. the year 2012 by offering him work on bill basis will tantamount to cession of work and as such will however fall within the definition of Section 2(oo) of the Act. The reference could have been more happily worded. None the less the terms of reference are sufficient to allow this Court to venture into the dispute as raised by the petitioner.

17. Admittedly, the petitioner was employed as a daily waged worker and was working on muster roll basis in the year 2005 and he continued working as such till the year 2011. The respondent in the year 2012 started employing the petitioner on bill basis, as is evident from the copy of muster roll placed on record as Ex. RW-1/B. The respondent has tried to portray that the employment of the petitioner was seasonal in nature, none the less, top priority was given to the petitioner for deployment as per the budgetary allocation, though on bill basis.

18. The two pronged defence raised by the respondent was that there was no whole time work available, it was seasonal work and secondly in the year 2012, the work was based on budgetary allocation made by the department. The plea of seasonal work has been raised half-heartedly in the pleadings and in fact no evidence has been led in this behalf by the respondent. RW-1 has merely stated that the work in the department is of seasonal nature and the petitioner still works on seasonal basis, subject to availability of work, though on bill basis. Apart from this there is nothing on record to remotely suggest that the work was seasonal in nature. No document evidencing that the petitioner was employed for seasonal forestry works subject to the availability of funds and work is there on record. Then, it is nowhere the plea taken by the respondent nor there is any iota of evidence on record to show that the forest department has been declared as a seasonal industry, as required under the law.

19. In respect of deployment based on the budgetary allocation, the respondent has placed on record a letter Ex. RW-1/C issued by the Forest Department purportedly introducing bill/contract basis for works relating to fixing of fence posts, fixing of barbed wires, construction of roads and buildings, preparation of nursery beds, filling of polythene bags, construction of inspection paths, bush cutting, carriage of material and soil and water conservation works. It inter-

alia envisaged that the execution of the above works on muster rolls be avoided. This letter is based on the notification dated 20.10.2001. However, the petitioner in the year 2005 had been engaged as a daily wager on muster rolls and he had continued to work as such till the year 2011. It is nowhere the case of the respondent that the petitioner had been engaged to do the above mentioned works. Unfortunately, the Divisional Forest Officer has neither appeared nor pleaded the factum that on the basis of the letter the respondent had started engaging the petitioner on bill basis from the year 2012. No reason has been shown which had compelled the respondent to change the service conditions of the petitioner from muster rolls to bill basis. Therefore, the respondent cannot take any help from the alleged letter.

20. Admittedly, the petitioner as per the respondent himself was working on muster roll basis till the year 2011. RW-1 Shri Devi Singh while under cross-examination clearly admitted that the petitioner had worked continuously from the year 2005 till the year 2011. So, the petitioner, as per this admission made by the witness of the respondent, had completed 240 days in a calendar year. The State was conscious of the fact that any change in the conditions of service had to be effected by issuing a notice to the workman regarding the change proposed to be effected, as is the statutory mandate of Section 9-A of the Act. The petitioner already having been in employment of the respondent on daily wages was clearly protected by the provisions of said Section of the Act. In case the respondent had to effect any change in the service conditions of the petitioner, he had to fall back upon the statutory provisions of the Act, which admittedly has not been done in the case in hand. The petitioner was neither retrenched nor a notice of change as postulated under the Act was issued by the respondent.

21. Not only is the action of the respondent violative on the aforesaid count, but it also smacks of unfair labour practice, as defined in section 2(ra) of the Act, as the action of the respondent tantamounts to abolishing the work of a regular nature, being done by the workman and to give such work on bill basis. The action of the respondent in changing the service conditions of the workman per se, was not in good faith and can be termed to be malafide as has been detailed hereinabove. The change effected by the respondent even tantamounts to the infraction of the provisions contained in 5th Schedule of the Act, vis-a-vis unfair labour practice.

22. For all the aforesaid reasons discussed hereinabove, this Court is of the considered opinion that the action of the respondent in offering work on bill basis after the year 2011 was indeed violative of the provisions of the Act, as has been discussed above, and thus illegal and unjustified in law. Issue no.1 is decided accordingly.

Issue No. 2

23. The learned Assistant District Attorney for respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82*, wherein it was inter-alia held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

24. In view of the aforesaid binding precedent, it cannot be said that the petition is not maintainable due to delay and laches. The issue in question is decided in the negative.

RELIEF

25. For all the foregoing reasons discussed hereinabove supra, the reference is allowed in favour of the petitioner and against the respondent. The action of the respondent in offering the petitioner work on bill basis w.e.f. the year, 2012 is held to be illegal, arbitrary and violative of the provisions of the Industrial Disputes Act, 1947. The petitioner will be deemed to have continued as a daily wager on muster roll basis with effect from the date of his initial engagement i.e from the year 2005. The petitioner shall be entitled to seniority and continuity in service, though without any back-wages. The reference is answered accordingly. Let a copy of this award be sent to the appropriate Government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today this 13th Day of March, 2024.

Sd/-
 (YOGESH JASWAL),
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Shimla.

**BEFORE YOGESH JASWAL, PRESIDING JUDGE,
 HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 06 of 2024
Instituted on : 18.01.2024
Decided on : 12.03.2024

Uma Devi, w/o Shri Karam Dass, r/o Village Dharja, PO Nauni, Tehsil & District Solan, HP.

...Petitioner

VERSUS

1. The Managing Director, M/S Sona Enterprises, SCO-36, sector 12, Panchkula, Haryana.
2. Dr. G.D. Dubey (Farm Incharge of Dr. YSP UHF at Village Majhgaon, PO Shamti, Tehsil & District Solan, HP.
3. The Registrar, University of Horticulture and Forestry, Nauni, Tehsil & District Solan, H.P.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondents : Nemo

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Smt. Uma Devi, w/o Shri Karam Dass r/o Village Dharja, PO Nauni, Tehsil & District Solan, HP. By (1) M/S Sona Enterprises, SCO-36, sector 12, Panchkula, Haryana though its Managing Director, (2) Dr. G.D. Dubey (Farm Incharge of Dr. YSP UHF at Village Majhgaon, PO Shamti, Tehsil & District Solan, HP (3) The Registrar, University of Horticulture and Forestry, Nauni, Tehsil & District Solan, H.P. w.e.f. 01.10.2022 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, what relief including reinstatement of the services, seniority, amount of back wages, past service benefits and compensation the above aggrieved workman is entitled to from the above managements/ employers?”

2. The case was listed for appearance of the parties for today but, however, neither the petitioner nor her counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

*“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex parte* and decide the reference application in the absence of the defaulting party.”*

5. Rule 22 reads thus:—

*“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex parte*.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”*

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, she is unwilling to file the statement of claim, adduce evidence or argue her case.

8. In the instant case, neither the workman nor her counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of her services w.e.f. 01.10.2022 was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to reinstatement, any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for necessary action at its end and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of March, 2024.

Sd/-
 (YOGESH JASWAL),
 Presiding Judge,
 Industrial Tribunal-cum-Labour Court,
 Shimla (H.P.).

**IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE,
 H.P. INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, SHIMLA**

**Reference No. : 152 of 2019
 Date of Institution : 12.12.2019
 Date of Decision : 13.03.2024**

Sohan Lal s/o Shri Krishan Chand, r/o Village Dalhore, PO Sherpur Salkhani, Tehsil Bilaspur, District Yamuna Nagar, Haryana.

Versus

The Managing Director M/s Symbiosis Pharmaceuticals, Suketi Road, Kala Amb, Tehsil Nahan, District Sirmour, H.P.

....Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Shri J.C Bhardwaj, AR
For the Respondent	: Sh. Sahil Thakur, Advocate

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Sohan Lal s/o Shri Krishan Chand, r/o Village Dalhore, PO Sherpur Salkhani, Tehsil Bilaspur, District Yamuna Nagar, Haryana by the Managing Director M/s Symbiosis Pharmaceuticals, Suketi Road, Kala Amb, Tehsil Nahan, District Sirmour, HP w.e.f. 02.01.2019 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, with relief including reinstatement, amount of back-wages, seniority, past service benefits and compensation the above aggrieved worker is entitled to from the above employer?”

2. The case of the petitioner as it emerges from the statement of claim is that he had commenced his service career as an operator with the respondent during the month of April, 2007. He had been performing his duties diligently and honestly. He had fallen ill and had applied for leave w.e.f. 17.12.2018 to 22.12.2018. He had resumed his duties on 23.12.2018 and had submitted the medical bills to the respondent/management. Thereafter, he had worked continuously, but was illegally removed/terminated from the service on 02.01.2019. His last drawn salary was ₹11,100/. No notice or retrenchment compensation had been paid to him and there was violation of the provisions of Section 25-F of the Act. His conduct was satisfactory and he had never been charge-sheeted, nor any enquiry was conducted against him. He was not given any reasonable opportunity to explain his position. Junior workmen to him are still serving the respondent. He had worked for more than 240 days in every calendar year. He raised an industrial dispute, which led to the present reference.

3. On notice, the respondent appeared and filed the reply.

4. The statement of claim was contested raising preliminary objections regarding concealment of facts and the petitioner having not come to the Court with clean hands and abandonment. On merits, it is admitted that the last drawn salary of the petitioner was ₹ 11,100/- per month. It is denied that the petitioner had joined the respondent company in April, 2007. It is alleged that he had joined on 01.09.2017. It is denied that he had proceeded on leave from 17.12.2018 till 22.12.2018. It is also denied that the respondent had terminated his services. The petitioner had left the service without intimation, hence, there is no violation of the provisions of Section 25-F of the Act. It is denied that the tenure of service of petitioner was 15 years. It is alleged that the employees who had left the service of his own, has no right of preference and re-engagement, as the employer loses trust in him due to his misconduct. The respondent is not liable

for the deliberate and wilful act of the petitioner. Hence, it is prayed that the claim petition be dismissed.

5. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 30.03.2022.

1. Whether the termination of the petitioner w.e.f. 02.01.2019 without complying with the provisions of Industrial Disputes Act, 1947, is illegal and unjustified? If yes, what relief the petitioner is entitled to?

OPP.....

2. Whether the claim petition is neither competent nor maintainable in the present form as alleged?

OPR.....

3. Relief.

7. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

8. Arguments of the learned Counsel for the parties heard and records gone through.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1 : Yes. Entitled to re-instatement with seniority and continuity along-with full back-wages.

Issue No. 2 : No

Relief : Reference is answered in the affirmative, as per operative part of the Award.

REASONS FOR FINDINGS

Issue No. 1

10. In support of his case, the petitioner, namely, Shri Sohan Lal has appeared in the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence the statement of account, OPD Slip and Medical certificate as Mark P-1 to Mark P-5.

11. In cross-examination, he denied that he had abandoned the job and that he had never been terminated by the company. He also denied that since he is working with Orison Pharma, he is not willing to join the respondent-company. He further denied that he is getting the salary from Orison Pharma since 14.05.2019. Volunteered that, his brother is working there. He admitted that he had been advised for surgery by ESI hospital, but he had produced the medical certificate issued by Manu Clinic. He denied that he had produced fabricated documents.

12. Conversely, the respondent examined Shri Sheetal Dass, Director as RW-1, who has tendered in evidence his affidavit Ex. RW-1/A, wherein he has corroborated on oath the contents of the reply filed by the respondent. He also tendered in evidence certificate (65-B) Ex. RW-1/B, statement Ex. RW-1/C and form Mark RX. He stated that they are ready to re-instate the petitioner, but without back-wages.

13. In cross-examination, he admitted that they have been making the payment to the petitioner since 2011. Volunteered that, he had been engaged through a contractor. He admitted that the payment was made to the petitioner by the company. He admitted that no notice had been issued to the petitioner to resume his duties. He also admitted that no chargesheet was issued to him. He denied that the petitioner had undergone operation and after his return, he was not taken back in the service. He denied that that the petitioner had worked with them from the year 2007 till the year 2017. No appointment letter had been issued.

14. From the pleadings and evidence of the parties, the undisputed fact is that the petitioner had worked as an operator with the respondent company. It is claimed by the petitioner that he had worked continuously w.e.f. April, 2007 till 02.01.2019 and thereafter his services had orally been terminated by the respondent. The respondent denied the fact and claimed that the petitioner had abandoned the job.

15. It is well known that abandonment has to be proved by the employer like any other fact. Therefore, the burden of proving of abandonment is upon the respondents. It has been laid down by our own Hon'ble High Court in case titled as *Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875* that voluntary abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Similarly, in case titled as *State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286*, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Sheetel Dass (RW1) alleging that the petitioner had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. It has been specifically admitted by RW-1 while under cross-examination that neither any notice was served upon the petitioner to resume his duties, nor he had ever been chargesheeted. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, 'animus' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such 'animus' on the part of the petitioner is forthcoming in the present case. Then, RW-1 Shri Sheetel Dass in his chief-examination itself has stated that they were ready to re-instate the petitioner, without back-wages. It only shows that the petitioner had not abandoned the job, but had been removed from service by the respondent. Thus, the plea of abandonment put forth by the respondent/employer is not established.

16. No doubt, the petitioner claimed that he had been engaged in the month of April, 2007 by the respondent, but his such testimony is not supported by any documentary evidence on record. No appointment letter was placed and exhibited on record by the petitioner. Though, the respondent in the reply claimed that the petitioner had joined on 01.09.2017 but, however, RW-1 while under cross-examination was categorical that the respondent/company had been making the payment to the petitioner since the year 2011. Therefore, it can safely be held that the petitioner had been serving the respondent since the year 2011.

17. It was contended by the learned counsel for the petitioner that he had worked continuously with the respondent and had completed 240 days or more in the preceding twelve calendar months from the date of his alleged termination, hence, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

18. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In R.M. Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106, it has been held by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

19. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period of 240 days in a block of 12 calendar months anterior to the date of his alleged termination, which as per the reference took place on 02.01.2019. The petitioner was specific in his evidence that from the date of his engagement with the respondent as an Operator, he had continuously worked till 02.01.2019. The stand taken by the respondent that the petitioner had abandoned the job himself stands already negated by me above. No ocular or documentary evidence has been led on record by the respondent to show that the petitioner had not continuously worked for a period of 240 days in a block of twelve calendar months prior to his alleged termination.

20. Since, the petitioner is proved to have completed 240 working days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not complied in letter and spirit by the respondent, as no retrenchment compensation had been paid, nor any requisite notice had been served upon the petitioner.

21. In view of the above, it can safely be held that the termination of the services of the petitioner by the respondent was in violation of the provisions of Sections 25-B and 25-F of the Act. Therefore, his termination has to be held as illegal, unlawful and unjustified.

22. The petitioner in the statement of claim has maintained that persons junior to him were retained in service by the respondent, but there is no seniority list placed and exhibited on record by the petitioner to show that persons junior to him are still serving the respondent. Therefore, there can be no violation of the provisions of Section 25-G of the Act by the respondent.

23. The petitioner has pleaded that the respondent had violated the provisions of Section 25-H of the Act. The statement of claim is nonexistent in the names of the persons who were allegedly appointed by the respondent after his retrenchment. There is also no ocular evidence on record to show that new/fresh hands had been appointed by the respondent after his alleged termination. Hence, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

24. Therefore, keeping in view aforesaid discussion and findings arrived at by me, I have no hesitation in coming to the conclusion that the termination of the services of the petitioner w.e.f. 02.01.2019 by the respondent is in violation of the provisions of Section 25-F of the Act. Hence, he

is entitled to be reinstated in service with seniority and continuity from the date of his illegal termination.

25. The petitioner as per his pleadings has claimed full back-wages. As PW-1, the petitioner claimed that from the date of his illegal termination, he has remained unemployed. The respondent has tried to establish on record that the petitioner had been working with Orison Pharma since 14.05.2019, but no specific evidence has been led by the respondent to prove the plea of gainful employment. In the absence of any such evidence on record, it cannot be said that after the date of his illegal termination, the petitioner is gainfully employed.

26. In *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324*, it has been held by the Hon'ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

27. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then it had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages he was drawing prior to the termination of services. Since, in the case in hand, the petitioner has shown that he was not employed, the onus lay on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, so has not been done by the respondent in the present case. Neither, it has been pleaded nor any grain of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. Therefore, I have no hesitation in holding that the petitioner is entitled to full back-wages from the date of his illegal termination i.e 02.01.2019 till his reinstatement. Therefore, issue no.1 is answered in the affirmative and in favour of the petitioner.

Issue No. 2

28. In support of this issue, no evidence has been led by the respondent. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. The present claim petition has been filed by the petitioner pursuant to the reference received from the appropriate Government. Accordingly, this issue is answered in the negative and against the respondent.

RELIEF

29. As a sequel to my above discussion and findings on issues no. 1 & 2 above, the claim of the petitioner succeeds and is hereby allowed and he is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of his termination i.e 02.01.2019 along-with full back-wages. The back-wages shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall carry an interest @ 4% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 13th Day of March, 2024.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Shimla (H.P.).

**BEFORE YOGESH JASWAL, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 106 of 2023
Instituted on : 15.09.2023
Decided on : 13.03.2024

Smt. Balbir Kaur C/O Sh. Satish Kumar (President) AITUC, HQ#7, Phase II, Omaxe Parkwoods, Chakkan Road, Baddi, District Solan, HP

...Petitioner.

VERSUS

The Managing Director, M/s Theon Pharmaceuticals Ltd, Village Sainimajra, Nalagarh, District Solan, H.P.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo
For the Respondent : Nemo

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the termination of the services of Smt. Balbir Kaur C/O Sh. Satish Kumar (President) AITUC, HQ#7, Phase II, Omaxe Parkwoods, Chakkan Road, Baddi, District Solan, HP. by the managing director, M/s Theon Pharmaceuticals Ltd, Village Sainimajra, Nalagarh, District Solan, H.P. w.e.f. 05.05.2020 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, what relief of reinstatement in services, past service benefits, leave encashment, overtime benefits and compensation etc. the above workman is entitled to from the above management?”

2. The case was listed for appearance of the parties for today but, however, neither the petitioner nor her counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity sake). Section 2 (b) of the Act defines the Award as under:—

"(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;".

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called "The Industrial Disputes (Central) Rules, 1957." Rule 10-B (9) reads thus:—

"10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party."

5. Rule 22 reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

6. The State of Himachal Pradesh has also framed rules called "The Industrial Disputes Rules, 1974." Rule 25 thereof reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex-parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, she is unwilling to file the statement of claim, adduce evidence or argue her case.

8. In the instant case, neither the workman nor her counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex-parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of her services w.e.f. 05.05.2020 was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the

petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to reinstatement, any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for necessary action at its end and the file after completion be consigned to the Record Room.

Announced in the open Court today this 13th day of March, 2024.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Shimla (H.P.).

**IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE,
H.P. INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, SHIMLA**

Reference No. : 117 of 2020
Date of Institution : 15.07.2020
Date of Decision : 14.03.2024

Babita Devi w/o Chander Kumar c/o Shri Tara Chand, r/o Village and PO Bhud, Tehsil Baddi, District Solan, H.P.

....Petitioner

Versus

The Managing Director, M/s Commed Chemicals Ltd., Village Dasomajra, P.O Bhud, Tehsil Baddi, District Solan, H.P.

....Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri R.K. Khidta, Adv.
 For the Respondent : Sh. Ashwani Kaundal, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Smt. Babita Devi W/o Chander Kumar C/o Shri Tara Chand R/o Village and PO Bhud, Tehsil Baddi, District Solan, H.P by the Managing Director, M/s Commed Chemicals Ltd., Village Dasomajra, P.O Bhud, Tehsil Baddi, District Solan, H.P w.e.f. 14.01.2020 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that she was engaged as a packing helper-production by the respondent w.e.f. 11.10.2011 and had worked continuously as such till 14.01.2020. Her services had been terminated orally w.e.f. 14.01.2020 without following the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred as the Act), as neither any notice nor wages in lieu of notice and retrenchment compensation had been paid to her. She had worked with utmost honesty and dedication and her work was always appreciated. She had proceeded on medical leave w.e.f. 08.01.2020 and after availing five days medical leave, when she had submitted her fitness certificate on 13.01.2020, she was not allowed to resume her duties. She had requested the respondent for re-engagement, but of no avail. She had completed more than 240 days in every calendar year. Juniors to her were still working with the respondent. She is stated to be unemployed. She raised an industrial dispute, which led to the present reference.

3. On notice, the respondent appeared and filed the reply.

4. The statement of claim was contested raising preliminary objections regarding lack of maintainability, wilful absence from duty and that the petitioner had not approached the Court with clean hands. On merits, it is admitted that the petitioner was engaged as a packing helper, but it was denied that she had been working with the respondent w.e.f. 11.10.2011. It is alleged that she had been appointed on 01.01.2013 on a monthly salary of '5,092/-'. The respondent had not terminated her from service. She herself had remained absent from the duty without any leave and according to clause 13 of the letter of appointment, her service automatically came to an end on account of wilful absence from duty. It is denied that she had submitted a medical certificate. For her wilful absence, the respondent had issued notices, but they were not responded to by her. The respondent had not violated any of the provisions of the Act. It is denied that the petitioner is unemployed. Hence, it is prayed that the claim petition be dismissed.

5. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 11.11.2021.

1. Whether the termination of the petitioner w.e.f. 14.01.2020 without complying with the provisions of the Industrial Disputes Act, 1947, is illegal and unjustified?

OPP.....

2. If issue no.1 is proved in affirmative, then what sort of relief the petitioner is entitled to?

OPP.....

3. Whether the claim is not maintainable in the present form as alleged?

OPR.....

4. Relief.

7. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

8. Arguments of the learned Counsel for the parties heard and records gone through.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2 : Entitled to reinstatement with seniority and continuity along-with full back-wages.

Issue No. 3 : No

Relief : Reference is answered in the affirmative, as per operative part of the Award

REASONS FOR FINDINGS

Issues No. 1 & 2

10. Being interlinked and correlated, both these issues are taken up together for discussion and decision.

11. In support of her case, the petitioner, namely, Babita Devi had appeared in the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A, wherein she reiterated almost all the averments as made in the claim petition. She also tendered in evidence demand notice Ex. PW-1/B.

12. In cross-examination, she denied that she had been absenting herself w.e.f. 06.01.2020. Volunteered that, she was not allowed to join her duties. She denied that she had misbehaved with Shri Jagdev Singh, HR Officer on 06.01.2020. She further denied that she was habitual of misbehaving and quarreling with the employees of the company. She also denied that she had misbehaved with Vikas Kumar Pandey, Packing Supervisor and Vikas Yadav, Production Officer on 14.05.2019. She denied that the company had issued the notice dated 10.02.2020, to which she did not respond. She denied that she had not gone to the company on 13.01.2020. She further denied that on 19.01.2020 a show cause notice was issued to her by the company. She denied that she is gainfully employed. She also denied that she has left her job and abandoned the same due to absenteeism.

13. Conversely, the respondent examined three witnesses. Shri Anil Kumar, Assistant Manager, Admin. of respondent company appeared in the witness dock as RW-1 and tendered in evidence authority letter Ex. RW-1/A and the appointment letter of the petitioner as Ex. RW-1/B. According to him the petitioner had worked in the company from 01.01.2013 as a helper and was getting a salary of ₹ 5,092/- . Her work was upto the mark, but she had been quarreling with the staff. Her department was changed on account of her behavior. She was deputed in another department, where she did not join. Notices Mark RX-1 and Mark RX-2 were issued to her. Complaints of misbehavior were made against her by S/Shri Jagdev, Vikas Kumar Pandey and Vikas Yadav. The witness placed on record undertaking and apology letter submitted by the petitioner as Ex. RW-1/C and Ex. RW-1/D. An inquiry had been initiated against her, but she did not join despite various notices issued by the company and the enquiry officer. The petitioner remained absent w.e.f. 07.01.2020 and her services have not been terminated.

14. In cross-examination, he feigned ignorance that the petitioner had initially been engaged on 11.10.2011. He admitted that the petitioner had worked continuously till 07.01.2020. He denied that the services of the petitioner had orally been terminated. He further denied that the

petitioner had remained ill from 08.01.2020 to 13.01.2020. He also denied that she had produced the medical certificate, but was not allowed to resume her duties. He admitted that no enquiry was conducted against the petitioner. He admitted that no action had been taken on the complaints filed by various persons. Volunteered that, company had initiated an enquiry and had charge-sheeted the petitioner. He admitted that there is no letter on the record to show that the petitioner had been asked to attend the inquiry. He also admitted that juniors to petitioner are still working with the respondent company and that work is still available with the company. He denied that the allegations levelled against the petitioner were manipulated. He further denied that the petitioner had never remained absent from duty. He also denied that they have not complied with the terms and conditions of appointment letter. He was not aware that the petitioner is not gainfully employed.

15. Shri Jagdev Singh, HR Officer, of respondent company appeared in the witness box as RW-2 and proved on record the complaint as Ex. RW-2/A.

16. In cross-examination, he admitted that the petitioner had not worked with him. He clearly admitted that the petitioner had never quarreled with him. He further admitted that on his complaint Ex. PW-2/A, no action was taken against the petitioner.

17. Shri Abhijeet Thakur, enquiry officer, who stepped into the dock as RW-3 has deposed that he had issued notice to the petitioner to join the enquiry on the charge-sheet framed by the company, but she did not turn up. He placed on record the enquiry report as Ex. RW-3/A.

18. In cross-examination, he admitted that there is no notice on record. He also admitted that before initiating any proceeding against a workman, he is firstly to be served. He further admitted that no proceedings regarding the enquiry were on the record. He also admitted that enquiry had to be conducted on the basis of charge-sheet. He admitted that before preparing the enquiry report Ex. RW-3/A, he had not recorded the statement of any official of the company.

19. Admittedly, the services of the petitioner were engaged as helper vide appointment letter Ex. RW-1/B. It is not disputed that she had worked as such continuously till Jan., 2020. Indisputably, the petitioner had completed 240 working days in each calendar year from the date of her engagement till her termination. The petitioner has claimed that on the basis of false allegations, her services had been terminated. However, the respondent took the stand that the services of the petitioner had never been terminated, rather on account of absence from duty, her services automatically came to an end in terms of clause 13 of her appointment letter.

20. Manifest that the respondent claims that the petitioner had abandoned the job. It is well known that abandonment has to be proved by the employer like any other fact. Therefore, the burden of proving of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as *Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875* that voluntary abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Similarly, in case titled as *State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286*, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that she has left/abandoned the job. Mere statement of Shri Anil Kumar, Assistant Manager, HR (RW1) alleging that the workman had abandoned/left the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the

evidence on record, so was not done by the respondent. Then, 'animus' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such 'animus' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

21. The respondent by examining Shri Abhijit Thakur and placing on record his report Ex. RW-3/A has tried to demonstrate that the petitioner was guilty of misconduct, as she had been picking quarrels with her seniors and staff members. However, the alleged domestic enquiry cannot be taken into consideration simply for the reason that the same had been conducted in the absence of the petitioner. RW-3 Shri Abhijit Thakur was categorical in his cross-examination that no notice issued to the petitioner was there on record. Similarly, RW-1 Shri Anil Kumar clearly admitted that there was no letter on record to show that the petitioner had been called upon to attend the enquiry. It has been laid down by the Hon'ble Supreme Court in Nehru Yuva Kendra Sangathan Vs. Mehbub Alam Laskar, 2008 LLR 428 that a finding of misconduct arrived on the basis of preliminary enquiry by the employer that too behind the back of the employee, cannot make foundation of the order of termination.

22. Then, RW-2 Shri Jagdev Singh, who as per the respondent is one of the complainants and who has placed on record his complaint against the petitioner as Ex. RW-2/A, has in clear terms admitted while under cross-examination that the petitioner had never quarreled with him. This admission would put a severe dent in the claim of the respondent regarding the alleged misconduct of the petitioner. No other person with whom the petitioner is alleged to have quarreled has been examined on record by the respondent. So also, the alleged domestic enquiry would not come to the rescue of the respondent in any way.

23. It was then contended by the learned counsel for the petitioner that she had worked continuously with the respondent and had completed 240 days or more in the preceding twelve calendar months from the date of her alleged termination, hence, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

24. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that she had worked for 240 days in the preceding twelve calendar months prior to her alleged retrenchment. The law on this issue is well settled. In R.M Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106, it has been held by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

25. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that she had worked continuously for a period of 240 days in a block of 12 calendar months anterior to the date of her alleged termination, which as per the reference took place on 14.01.2020. The petitioner was specific in her evidence that from the date of her engagement with the respondent as a packing helper, she had continuously worked till 14.01.2020. The stand taken by the respondent that the petitioner had abandoned the job herself has already been negated by me above. No ocular or documentary evidence has been led on record by the respondent to show that the petitioner had not continuously worked for a period of 240 days in a block of twelve calendar months prior to her alleged termination. Rather, it is evident from the testimony of RW-1 Shri Anil Kumar that from the date of the initial engagement of the petitioner, which as per him was 11.10.2011, she had continuously worked till 07.01.2020.

26. Since, the petitioner is proved to have completed 240 working days during the period of twelve calendar months in the preceding year from the date of her retrenchment, her services could not have been terminated unless she was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not complied in letter and spirit by the respondent, as no retrenchment compensation had been paid, nor any requisite notice had been served upon the petitioner.

27. In view of the above, it can safely be held that the termination of the services of the petitioner by the respondent was in violation of the provisions of Sections 25-B and 25-F of the Act. Therefore, her termination has to be held as illegal, unlawful and unjustified.

28. The principle of "last come first go" is envisaged under Section 25-G of the Act. The said Section provides:

"25-G. Procedure for retrenchment.- *Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

29. It is claimed by the petitioner that after the termination of her services, persons junior to her were retained by the respondent. The petitioner while pledging her oath as PW-1 has also specifically stated so. It was vociferously argued by the learned counsel for the respondent that in the absence of any seniority list on the file, the petitioner cannot claim any protection under the provisions of the Act. To my mind, this contention of the learned counsel does not hold good, as it is by now well settled that an admission is the best piece of evidence and the facts admitted need not be proved. It has been admitted by RW-1 Shri Anil Kumar in his substantive evidence that juniors to the petitioner are still working with the respondent. Manifest that the respondent admitted such pleaded fact and evidence of the petitioner on record. This indicates that persons junior to the petitioner are still serving the respondent. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing, but unfair labour practice. There is nothing on the file to establish that at the time of retaining the persons junior to the petitioner, an opportunity of re-employment was afforded to her.

30. Such being the situation, I have no hesitation to conclude that the respondent has also contravened the provisions of Section 25-G of the Act.

31. However, the petitioner's allegation that the respondent has violated the provisions of Section 25-H of the Act as well, to my mind, does not appear to have been substantiated. The material on record, thus, being too scanty and nebulous to lend assurance to her allegation that new/fresh workers were appointed after the termination of her services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

32. The petitioner as per her pleadings has claimed full back-wages. As PW-1, she claimed that from the date of her illegal termination, she has remained unemployed. In Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324, it has been held by the Hon'ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

33. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then he had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages she was drawing prior to the termination of her service. Since, in the case in hand, the petitioner has shown that she was not employed, the onus lay on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, so has not been done by the respondent in the present case. Neither, it has been pleaded nor any grain of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. RW-1 Shri Anil Kumar has feigned ignorance that the petitioner is not gainfully employed. Therefore, I have no hesitation in holding that the petitioner is entitled to full back-wages from the date of her illegal termination i.e 14.01.2020 till her reinstatement. Both these issues are decided accordingly.

Issue No. 3

34. In support of this issue, no evidence has been led by the respondent. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. The present claim petition has been filed by the petitioner pursuant to the reference received from the appropriate Government. Accordingly, this issue is answered in the negative and against the respondent.

RELIEF

35. As a sequel to my above discussion and findings on issues no. 1 to 3 above, the claim of the petitioner succeeds and is hereby allowed and she is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of her termination i.e 14.01.2020 along-with full back-wages. The back-wages shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall carry an interest @ 4% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 14th Day of March, 2024.

Sd/-
 (YOGESH JASWAL),
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Shimla (H.P.).

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, SHIMLA

Reference No. : 218 of 2020
Date of Institution : 18.09.2020
Date of Decision : 14.03.2024

Naseema Begam w/o Shri Hakim Din, r/o Village Nanuwal, PO Khera, Tehsil Nalagarh, District Solan, H.P.

*....Petitioner.**Versus*

The Managing Director, M/s Commed Chemicals Ltd., Village Dasomajra, P.O Bhud, Tehsil Baddi, District Solan, H.P.

....Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri R.K Khidta, Adv.
 For the Respondent : Sh. Ashwani Kaundal, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Smt. Naseema Begam w/o Shri Hakim Din, r/o Village Nanuwal, PO Khera, Tehsil Nalagarh, District Solan, H.P by the Managing Director, M/s Commed Chemicals Ltd., Village Dasomajra, P.O. Bhud, Tehsil Baddi, District Solan, H.P w.e.f. 18.03.2020 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that she was engaged as packing helper-production by the respondent w.e.f. 27.12.2016 and had worked continuously as such till 18.03.2020. Her services had been terminated orally w.e.f. 18.03.2020 without following the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred as the Act), as neither any notice nor wages in lieu of notice and retrenchment compensation had been paid to her. She had worked with utmost honesty and dedication and her work was always appreciated. The notice received from the respondent was duly replied by her, but her reply was not considered and without conducting an inquiry, her services were illegally terminated. She requested the respondent for her re-engagement, but to no avail. The petitioner had completed more than 240 days in every calendar year. Juniors to her were still working with the respondent. She is stated to be unemployed. She raised an industrial dispute, which led to the present reference.

3. On notice, the respondent appeared and filed the reply.

4. The statement of claim was contested raising preliminary objections regarding lack of maintainability, wilful absence from duty and that the petitioner had not approached the Court with clean hands. On merits, it is admitted that the petitioner was engaged as a packing helper, but it was denied that she had been working with the respondent w.e.f. 27.12.2016. It is alleged that she had been appointed on 02.04.2018 and at the time of leaving of the job, she had been drawing a salary of ₹ 7,662/- per month. The respondent had not terminated her services. She herself had remained absent from duty without any leave and according to clause 13 of the appointment letter, her service automatically came to an end on account of wilful absence from duty. Her work was not satisfactory, as she was in the habit of misbehaving with colleagues and seniors. Number of show

cause notices were issued to her, but she neither improved her behavior nor replied the show cause notices. The respondent had not violated any of the provisions of the Act. It is denied that the petitioner is unemployed. Hence, it is prayed that the claim petition be dismissed.

5. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 11.11.2021.

1. Whether the termination of the petitioner w.e.f. 18.03.2020 without complying with the provisions of the Industrial Disputes Act, 1947, is illegal and unjustified?

OPP.....

2. If issue no.1 is proved in affirmative, then what sort of relief the petitioner is entitled to?

OPP.....

3. Whether the claim is not maintainable in the present form as alleged?

OPR.....

4. Relief.

7. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

8. Arguments of the learned Counsel for the parties heard and records gone through.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2 : Entitled to reinstatement with seniority and continuity along-with full back-wages.

Issue No. 3 : No

Relief : Reference is answered in the affirmative, as per operative part of the Award

REASONS FOR FINDINGS

Issues No.1 & 2

10. Being interlinked and correlated, both these issues are taken up together for discussion and decision.

11. In support of her case, the petitioner, namely, Naseem Begam appeared in the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A, wherein she reiterated almost all the averments as made in the claim petition. She also tendered in evidence demand notice Ex. PW-1/B.

12. In the cross-examination, she denied that she had been absenting herself w.e.f. 18.03.2020. Volunteered that, she was not allowed to join her duties. She denied that she had misbehaved with Shri Sanjeev Kumar, Assistant Operator, Mukesh Kumar, Sonu, Dev Raj and Ansul Gupta, officials of the company on 06.12.2018. She further denied that she was habitual of misbehaving and quarreling with the employees of the company. She denied that the company had issued notices dated 18.03.2020, 24.03.2020, 31.07.2020 and 12.01.2020 to her and to which she had not filed any reply. She also denied that she had tendered apology vide letters dated 03.04.2018 and 06.12.2018. She further denied that on 24.03.2020, one show cause notice had been issued to her by the company. It was also denied that she had been informed about the initiation of domestic inquiry against her. She stated that appointment letter dated 02.04.2018 had been issued to her. She feigned ignorance that there is a stipulation in clause 13 of the appointment letter that if she was found absent for 8 days, she would have no lien on the job and that her services would be terminated automatically. She denied that she is gainfully employed. She also denied that she had left her job and abandoned the same due to absenteeism.

13. Conversely, the respondent examined two witnesses. Shri Anil Kumar, Assistant Manager, Admin., of respondent company appeared in the witness dock as RW-1 and tendered in evidence authority letter Ex. RW-1/A and the appointment letter of the petitioner as Ex. RW-1/B. According to him, the petitioner had worked with the company from 02.04.2018 as a helper and was getting a salary of ₹7,400/. Her work was upto the mark, but she used to quarrel with the staff. Her department was changed on account of her behavior. She was deputed in another department, where she did not join. Notices Mark RX-1 and Mark RX-2 had been issued to her. She had remained absent from the company w.e.f. 18.03.2020 and her services had not been terminated.

14. In cross-examination, he feigned ignorance that the petitioner had initially been engaged as a packing helper w.e.f. 27.12.2016. He admitted that the petitioner had worked continuously till 18.03.2020. He denied that the services of the petitioner had orally been terminated. He admitted that no enquiry was conducted against the petitioner. He further admitted that the respondent company had refused to take the petitioner back at the same place and on the post, where she was working prior to issuance of notice. He also admitted that juniors to petitioner are still working with the respondent company and that the work is still available. He also admitted that neither any notice nor any compensation had been paid to the petitioner prior to her termination. He denied that the petitioner had never remained absent from duty. He further denied that they have not complied with the terms and conditions of appointment letter. He was not aware that the petitioner is not gainfully employed.

15. Ms. Phool Kumari, packing helper of respondent company appeared in the witness box as RW-2. She deposed that the petitioner had quarreled with her and had also used filthy language. A compromise was arrived at between them and the petitioner had admitted her fault.

16. In cross-examination, she admitted that no written complaint had been moved by her. She also admitted that she had deposed, whatever she was told to depose by the company.

17. Admittedly, the services of the petitioner had been engaged as helper vide appointment letter Ex. RW-1/B. It is not disputed that she had worked as such continuously till 18.03.2020. Indisputably, the petitioner had completed 240 working days in each calendar year from the date of her engagement till her termination. The petitioner has claimed that on the basis of false allegations, her services had been terminated. However, the respondent took the stand that the services of the petitioner had never been terminated, rather on account of absence from duty, her services automatically came to an end in terms of clause 13 of her appointment letter.

18. Manifest that the respondent claims that the petitioner had abandoned the job. It is well known that abandonment has to be proved by the employer like any other fact. Therefore, the burden of proving of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as *Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875* that voluntary abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Similarly, in case titled as *State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286*, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that she has left/abandoned the job. Mere statement of Shri Anil Kumar, Assistant Manager, HR (RW1) alleging that the workman had abandoned/left the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, 'animus' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such 'animus' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

19. As per the show cause notices, copies of which stand placed on record by the respondent as Mark RX/1 and Mark RX/2, the petitioner is claimed to have physically assaulted the senior workers. RW-2 Phool Kumari was also examined to show that the petitioner had picked up quarrel with her and had also abused her. Manifest that the petitioner is claimed by the respondent to be guilty of misconduct.

20. Since, the petitioner as per her pleadings and evidence has specifically claimed that there was no misconduct on her part nor there was any dereliction in duties by her, it was incumbent upon the respondent to have conducted a regular departmental enquiry and to have laid a charge against the petitioner regarding the acts of misconduct and dereliction of duties on her part. Admittedly, so was not done by the respondent, as is evident from the testimony of RW-1 Shri Anil Kumar, who clearly admitted while under cross examination that no show cause notice had been issued to the petitioner nor any charge-sheet was served upon her. It has been laid down by the Hon'ble Supreme Court in *Nar Singh Pal Vs. Union and India and ors., 2000 LLR 577* that if an order has been passed by way of punishment and was punitive in nature, it was the duty of the respondents to hold a regular departmental enquiry and they could not have terminated the services of the appellants arbitrarily by paying him the retrenchment compensation. Therefore, the present is a case where the termination of the petitioner is based on no enquiry and no charge. Hence, it becomes a case of illegal retrenchment. It has been laid down in *Sachiv, Krishi Upaj Mandi Samiti, Sanawad Vs. Mahendra Kumar S/o Mangi Lal Tanwaro, 2004 LLR 405* that where the termination of an employee is based on no inquiry, no charge and not by way of punishment, it becomes a case of illegal retrenchment. In the case in hand, RW-1 Shri Anil Kumar has categorically admitted that no chargesheet was issued to the petitioner nor any notice or compensation had been paid to her prior to her termination. Therefore, in the absence of any regular departmental enquiry having been conducted against the petitioner, it cannot be said that she had misbehaved with the senior workers of the company. No reliance can be placed upon the testimony of RW2 Ms. Phool Kumari, she being a tutored witness.

21. Since, it stands proved on record that without conducting any regular departmental enquiry and without putting a charge to the petitioner, she was held to be guilty of misconduct, her termination is in contravention of the provisions of the Act and for this reason, the same is held to

be illegal and improper. No doubt, the respondent/employer could have led evidence for the first time before this Court to prove the guilt of the petitioner-workman, but so has also not been done in the present case by the respondent.

22. The petitioner as per her pleadings has claimed full back-wages. As PW-1, the petitioner claimed that from the date of her illegal termination, she has remained unemployed. In ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324***, it has been held by the Hon'ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

23. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then he had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages she was drawing prior to the termination of her service. Since, in the case in hand the petitioner has shown that she was not employed, the onus lay on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, so has not been done by the respondent in the present case. Neither, it has been pleaded nor any grain of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. Therefore, I have no hesitation in holding that the petitioner is entitled to full back-wages from the date of her illegal termination i.e 18.03.2020 till her reinstatement. Both these issues are decided accordingly.

Issue No. 3

24. In support of this issue, no evidence has been led by the respondent. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. The present claim petition has been filed by the petitioner pursuant to the reference received from the appropriate Government. Accordingly, this issue is answered in the negative and against the respondent.

RELIEF

25. As a sequel to my above discussion and findings on issues no. 1 to 3 above, the claim of the petitioner succeeds and is hereby allowed and she is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of her termination i.e 18.03.2020 along-with full back-wages. The back-wages shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall carry an interest @ 4% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 14th Day of March, 2024.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Shimla (H.P.).

**IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE,
H.P. INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, SHIMLA**

**Reference No. : 120 of 2019
Date of Institution : 06.08.2019
Date of Decision : 15.03.2024**

Madan Lal s/o Shri Chet Ram, r/o Village Bawra, PO Chambahat, Tehsil & District Solan, H.P.

....*Petitioner.*

Versus

The Executive Engineer, HPSEB Electrical Sub-Division, Saproon, District Solan, H.P.
....*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri J.C Bhardwaj, AR.
For the Respondent : Sh. Surender Sharma, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Madan Lal s/o Shri Chet Ram, r/o Village Bawra, PO Chambahat, Tehsil & District Solan, H.P by the Executive Engineer, HPSEB Electrical Sub Division, Saproon, District Solan, H.P w.e.f. 26.05.2000 allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, with relief including reinstatement, amount of back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner as it emerges from the statement of claim is that initially he was appointed as daily wage T-mate by the respondent on 02.02.1998 and had continued to serve as such till 26.05.2000. On the said date he was illegally removed, without notice and that too in violation of the Employment Model Standing Orders Act. He had completed 240 days in the twelve calendar months preceding his termination. He is unemployed. On account of lack of knowledge, he had filed CWP No. 9639 of 2008 before the Hon’ble High Court of HP, which was decided in his favour. He had submitted his joining on 08.04.2011. A contempt petition was filed by him, when the Hon’ble High Court had directed him to seek the remedy under the provisions of Industrial Disputes Act, 1947 (hereinafter referred as the Act) by granting leave and liberty. The junior workmen were retained by the respondent in violation of the provisions of Section 25-G of the Act. He raised an industrial dispute, which led to the present reference.

3. On notice, the respondent appeared and filed the reply.

4. The statement of claim was contested raising preliminary objections regarding suppression of material facts, cause of action, delay and latches and estoppel. On merits, it is denied that the petitioner had joined as daily wage T-mate and that he had continued to work as such till 26.05.2000. It is alleged that he had been engaged as daily rated beldar w.e.f. 26.04.1989 and had worked with certain interruptions/breaks. His engagement had been made against the works and on

completion of the said works, his engagement automatically came to an end on 26.04.1998, but he had continued on the order passed by the erstwhile Tribunal. He had not completed 240 days of continuous service in the preceding twelve calendar months, hence no notice was required to be given to him. It is alleged that the operation and execution of orders passed by the Hon'ble High Court in CWP No. 9639 of 2008, were stayed in LPA No. 500 of 2011. It is denied that the petitioner is still unemployed. It is further denied that the termination of the petitioner is in violation of the provisions of the Act. Hence, it is prayed that the claim petition be dismissed.

5. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court, vide order dated 21.03.2022.

1. Whether the termination of the petitioner w.e.f. 26.05.2000 without complying with the provisions of the Industrial Disputes Act, 1947, is illegal and unjustified? If yes, what relief the petitioner is entitled to?

OPP.....

2. Whether the claim petition is not maintainable in the present form, as alleged?

OPR.....

3. Relief.

7. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

8. Arguments of the learned Counsel for the parties heard and records gone through.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Negative

Issue No. 2 : Negative

Relief : Reference is answered in the negative, as per the operative part of the Award

REASONS FOR FINDINGS

Issue No. 1

10. In support of his case, the petitioner, namely, Madan Lal appeared in the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence the seniority list as Mark PX-1, his joining report as Ex. PW-1/B, details of his presence as Mark PX-2 and Mark PX-3.

11. In the cross-examination, he stated that he had not left/abandoned the job. Volunteered that, he had been terminated in the year 2000. He denied that he had not completed 240 working days. The services of his juniors Suresh, Krishan Thakur and Manohar Lal have been regularized. He stated that he had been working on daily basis at home during this period.

12. Conversely, the respondent examined Shri Rajesh Kumar, JOA (IT) as RW-1, who has tendered in evidence his affidavit Ex. RW-1/A, wherein he has corroborated on oath the contents of the reply filed by the respondent. He also tendered in evidence the details of presence of the petitioner as Ex. RW-1/B.

13. In cross-examination, he admitted that he has not placed any letter on record to show that the petitioner was engaged for specific work and for specific period. He feigned ignorance that the respondent has engaged more than 1000 employees since the year 1989. He was not aware that Suresh Kumar and Krishan Thakur, who are junior to the petitioner, were regularized. He denied that the petitioner was not engaged intentionally whereas all other workers had been engaged.

14. Before proceeding further, it is important to mention here that the petitioner had filed CWP(T) No. 9639 of 2008 before the Hon'ble High Court, which was decided on 14.12.2010, wherein the Hon'ble High Court of H.P has been pleased to pass the following directions to the respondent:

“Consequently, the writ petition is allowed. The retrenchment of the petitioner is declared void-ab initio. The respondents are directed to reinstate the petitioner within a period of two months after the production of certified copy of this judgment by the petitioner. He is entitled to 50% back-wages. However, he is entitled to count this period for the purpose of seniority.”

15. The aforesaid order had been challenged by the respondent by filing the LPA No. 500 of 2011, wherein the Hon'ble High Court of H.P has observed as under:

“On having heard this matter for some time, learned Counsel representing the respondent-writ petitioner seeks permission to withdraw the writ petition itself with liberty reserved to resort to appropriate remedy available to the writ petitioner in accordance with law including under the provisions of Industrial Disputes Act. The leave and liberty as sought is granted. Consequently, the writ petition is ordered to be dismissed as withdrawn. The present appeal also does not survive. The same is accordingly disposed of. We hope that in the event of appropriate remedy resorted to by the writ petitioner, the appellant-Board shall not raise objection of limitation.”

16. Indisputably, after passing of the aforesaid order, the petitioner had raised the industrial dispute, which led to the filing of the present reference by the appropriate Government before this Court.

17. As per the respondent, the engagement of the petitioner as daily waged beldar was for specific work and period and that his services had come to an end automatically on the completion of said works. This plea has been raised half-heartedly in the pleadings and in fact no evidence has been led in this behalf by the respondent. No doubt, RW-1 Shri Rajesh Kumar in his chief examination stated so, but his self-serving testimony in this regard cannot be taken as a gospel truth. No other witness was examined, nor any document has seen the light of the day to show that the engagement of the petitioner was for specific work and period. RW-1 clearly admitted in his cross-examination that he has not placed on record any letter to show that the petitioner had been engaged for specific work and for specific period. Therefore, this plea raked up by the respondent stands not established on record and is accordingly negated.

18. It was then contended by the learned counsel for the petitioner that the petitioner had worked continuously with the respondent and had completed 240 days or more in the preceding twelve calendar months from the date of his alleged termination, hence, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

19. Section 25-B of the Act defines “continuous service”. In terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that she had worked for 240 days in the preceding twelve calendar months prior to her alleged retrenchment. The law on this issue is well settled. In R.M. Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106, it has been held by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

20. Applying the principles laid down in the above case by the Hon’ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period of 240 days in a block of 12 calendar months anterior to the date of his alleged termination, which as per the reference took place on 26.04.2000. The petitioner has failed to establish by leading cogent and satisfactory evidence on record that he had completed 240 days of continuous work in a block of twelve calendar months preceding the date/month of his retrenchment, i.e w.e.f. 26.05.2000, as envisaged under Section 25-B of the Act. The respondent has placed on record the details of presence/absence of the petitioner as Ex. RW-1/B. The petitioner himself has placed reliance upon the details of his presence/absence by placing on record Mark P-2. Manifest that the petitioner admits the document Ex. RW-1/B to be pertaining to him. This document clearly shows that from 26.09.1999 till 25.05.2000, the petitioner in totality had worked for 234 days. Earlier to it till 25.09.1998, the petitioner, as per this document, had not even worked for a single day. Therefore, he had not completed 240 working days in a block of 12 calendar months preceding his alleged termination. It has been laid down by the Hon’ble Supreme Court in case titled as Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138 that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

21. The petitioner in the statement of claim has maintained that persons junior to him were retained in service by the respondent, but there is no seniority list placed and exhibited on record by the petitioner to show that persons junior to him are still serving the respondent. Therefore, there can be no violation of the provisions of Section 25-G of the Act by the respondent.

22. The petitioner has nowhere pleaded that the respondent had violated the provisions of Section 25-H of the Act. Even otherwise, the statement of claim is nonexistent in the names of the persons who were allegedly appointed by the respondent after his retrenchment. There is also no ocular evidence on record to show that new/fresh hands had been appointed by the respondent after his alleged termination. Hence, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

23. In all fairness, the learned Authorized Representative for the petitioner placed reliance upon “Sukhjinder Singh Vs. Director, State Transport and Ors., 1997 STPL 12171 P&H”, “Anoop Sharma Vs. Executive Engineer, Public Health Division No.1, Panipat, (HR.), 210 LLR 627” and “Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation, 1985 STPL 3912 SC”. For the reasons mentioned above, the petitioner cannot derive any advantage from what has been decided in these cases.

24. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, issue no.1 is decided in the negative and against the petitioner.

25. In support of this issue, no evidence has been led by the respondent. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. The present claim petition has been filed by the petitioner pursuant to the reference received from the appropriate Government. Accordingly, this issue is decided in the negative and against the respondent.

RELIEF

26. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 15th Day of March, 2024.

Sd/-

(YOGESH JASWAL),
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Shimla (H.P.).

BEFORE YOGESH JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 92 of 2023
Instituted on : 08.06.2023
Decided on : 30.03.2024

Alka Devi, w/o shri Jeevan Singh, r/o Village Shekhpura, P.O. Kandori, Tehsil Indora, District Solan, H.P.

...Petitioner.

VERSUS

1. The Factory Manager, M/s Procter & Gamble Home Products Pvt. Lts, Plot No. 1 Industrials Area, Katha, Tehsil Nalagarh, District Solan, H.P.

2. The Management M/s SIS, Security and Intelligence Service (India) Ltd. SS Complex, 1st Floor, SCO 12-13 (Near Gupta Hospital), Bye Pass Baddi, Tehsil Nalagarh, District Solan, H.P.

...Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondents : Shri Rahul Mahajan, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Smt. Alka Devi, w/o shri Jeevan Singh, r/o Village Shekhpura, P.O. Kandori, Tehsil Indora, District Solan, H.P. by (i) the Factory Manager, M/s Procter & Gamble Home Products Pvt. Lts, Plot No. 1 Industrials Area, Katha, Tehsil Nalagarh, District Solan, H.P. (ii) the Management M/s SIS, Security and Intelligence Service (India) Ltd. SS Complex, 1st Floor, SCO 12-13 (Near Gupta Hospital), Bye Pass Baddi, Tehsil Nalagarh, District Solan, H.P. w.e.f. 01.08.2022 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, what relief of reinstatement in services, past service benefits, leave encashment, overtime benefits and compensation etc. the above workman is entitled to from the above managements?”

2. The case was listed for appearance of the parties for today but, however, neither the petitioner nor her counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A; ”.

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

*“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex parte* and decide the reference application in the absence of the defaulting party.”*

5. Rule 22 reads thus:—

*“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex parte*.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”*

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

*“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex parte*.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board,*

Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, she is unwilling to file the statement of claim, adduce evidence or argue her case.

8. In the instant case, neither the workman nor her counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of her services w.e.f. 01.08.2022 was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to reinstatement, any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for necessary action at its end and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of March, 2024.

Sd/-
 (YOGESH JASWAL),
 Presiding Judge,
 Industrial Tribunal-cum-Labour Court,
 Shimla (H.P.).

**BEFORE YOGESH JASWAL, PRESIDING JUDGE,
 HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 186 of 2022
Instituted on : 20.05.2022
Decided on : 30.03.2024

Sunny Kashyap, s/o Shri Roop Ram, r/o Village Daonsi, P.O. Salogra Tehsil & District Solan, H.P.

...Petitioner.

VERSUS

The Managing Director M/S Ruvi Tech, Village and Post Office Salogra, Tehsil & District Solan, H.P.

...Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo
 For the Respondent : Sh. Rahul Mahajan, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Sunny Kashyap, s/o Shri Roop Ram, r/o Village Daonsi, P.O. Salogra Tehsil & District Solan, H.P. by the Managing Director M/S Ruvi Tech, Village and Post Office Salogra, Tehsil & District Solan, H.P. w.e.f. 08.10.2020 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement of the services, seniority, amount of back wages, past service benefits and compensation the above aggrieved workman is entitled to from, the above management/ employer?”

2. The case was listed for appearance of the parties for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;.”

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

*“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex parte* and decide the reference application in the absence of the defaulting party.”*

5. Rule 22 reads thus:—

*“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex parte*.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board,*

Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

6. The State of Himachal Pradesh has also framed rules called "The Industrial Disputes Rules, 1974." Rule 25 thereof reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the workman nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services w.e.f. 08.10.2020 was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to reinstatement, any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for necessary action at its end and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of March, 2024.

Sd/-
 (YOGESH JASWAL),
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Shimla (H.P.).

शहरी विकास विभाग

अधिसूचना

शिमला—02, 20 सितम्बर, 2024

संख्या यू.डी.-ए.(3)-18/2024-कुल्लू—हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश नगरपालिका निर्वाचन नियम, 2015 के नियम 90 के उप-नियम (6) के साथ पठित, हिमाचल प्रदेश नगरपालिका अधिनियम, 1994 (1994 का अधिनियम संख्यांक 13) की धारा 27 की उप-धारा (1) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, जिला कुल्लू में नगर पंचायत, भुन्तर की बाबत अध्यक्ष के निर्वाचन को निम्न प्रकार से राजपत्र में अधिसूचित करते हैं:—

नगर पंचायत का नाम	निर्वाचित अध्यक्ष का नाम व पता	निर्वाचित / निर्विरोध
नगर पंचायत भुन्तर, जिला कुल्लू (हिं0प्र0)।	श्रीमती रवीन्द्रा डोगरा पत्नी श्री सत्य प्रकाश डोगरा, निवासी परला भुन्तर, वार्ड नं० 7, तहसील भुन्तर, जिला कुल्लू (हिं0प्र0)।	निर्विरोध

आदेश द्वारा,
हस्ताक्षरित /—
(राजेश शर्मा),
सचिव (शहरी विकास)।

[Authoritative English text of this Department Notification No.-UD-A(3)-18/2024-Kullu dated 20-09-2024 as required under clause(3) of Article 348 of the Constitution of India].

URBAN DEVELOPMENT DEPARTMENT

NOTIFICATION

Shimla-2 the, 20th September, 2024

No. UD-A(3)-18/2024-Kullu.—In exercise of the powers conferred by sub-section (1) of Section 27 of the Himachal Pradesh Municipal Act, 1994 (Act No. 13 of 1994) read with sub-rule (6) of Rule 90 of the Himachal Pradesh Municipal Election Rules, 2015, the Governor of Himachal Pradesh is pleased to notify in the Official Gazette, election of President in respect of Nagar Panchayat Bhunter, District Kullu, Himachal Pradesh as under:—

Name of Nagar Panchayat	Name & Address of Elected President	Elected/unopposed
Nagar Panchayat Bhunter, District Kullu, Himachal Pradesh.	Smt. Ravindra Dogra w/o Satya Prakash Dogra, r/o Parla Bhunter, Ward No. 7, Tehsil Bhunter, District Kullu, Himachal Pradesh.	Unopposed

By order,
Sd/-
(RAJESH SHARMA),
Secretary (UD).

शहरी विकास विभाग

अधिसूचना

शिमला-02, 20 सितम्बर, 2024

संख्या यू.डी.-ए.(3)-8/2024-सोलन-लूज.—हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश नगरपालिका निर्वाचन नियम, 2015 के नियम 90 के उप नियम (6) के साथ पठित, हिमाचल प्रदेश नगरपालिका अधिनियम, 1994 (1994 का अधिनियम संख्यांक 13) की धारा 27 की उपधारा (1) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, जिला सोलन में नगर परिषद, नालागढ़ की बाबत अध्यक्ष के निर्वाचन को निम्न प्रकार से राजपत्र में अधिसूचित करते हैं:—

नगर परिषद का नाम	निर्वाचित अध्यक्ष का नाम व पता	निर्वाचित / निर्विरोध
नगर परिषद, नालागढ़, जिला सोलन (हिं0प्र0)।	श्रीमती वन्दना बंसल पत्नी श्री शक्ति बेदी, सदस्य वार्ड नं० 2, नालागढ़, जिला सोलन, हिमाचल प्रदेश।	निर्विरोध

आदेश द्वारा,
हस्ताक्षरित /—
(राजेश शर्मा),
सचिव (शहरी विकास)।

[Authoritative English text of this Department Notification No.-UD-A(3)-8/2024-Solan-loose dated 20-09-2024, as required under clause(3) of Article 348 of the Constitution of India].

URBAN DEVELOPMENT DEPARTMENT

NOTIFICATION

Shimla-2 the, 20th September, 2024

No. UD-A(3)-8/2024-Solan-loose.—In exercise of the powers conferred by sub-section (1) of Section 27 of the Himachal Pradesh Municipal Act, 1994 (Act No. 13 of 1994) read with sub-rule (6) of Rule 90 of the Himachal Pradesh Municipal Election Rules, 2015, the Governor of Himachal Pradesh is pleased to notify in the Official Gazette, election of President in respect of Municipal Council, Nalagarh, District Solan, Himachal Pradesh as under:—

Name of Municipal Council	Name & Address of Elected President	Elected/unopposed
Municipal Council, Nalagarh, District Solan, Himachal Pradesh.	Smt. Vandana Bansal w/o Sh. Shakti Bedi, Member Ward No. 2, Nalagarh, District Solan, Himachal Pradesh.	Unopposed

By order,
Sd/-
(RAJESH SHARMA),
Secretary (UD).

**In the Court of Sh. Gaurav Chaudhary, Collector, Sub-Division Ghumarwin,
Distt. Bilaspur, H.P.**

Proclamation Under Section 14 of H.P. Land Revenue Act

Case No. 35/2 of 2024/ Mutation Appeal

1. Krishan Lal s/o Sh. Bhagwana Ram
2. Ashwani Kumar s/o Late Sh. Madan Lal L.R. of deceased Madan Lal
3. Palvi d/o Late Sh. Madan Lal L.R. of deceased Madan Lal, minor through natural guardian her real brother Ashwani Kumar.

All are residents of Village Tikkar, P.O. Kothi, Tehsil Ghumarwin, Distt. Bilaspur, H.P.

..Applicants.

Versus

1. Golu Ram *alias* Arun Sankhyan s/o Sh. Hakam Singh
2. Hakam Singh s/o Late Sh. Jamna Dass

Both are residents of Tikkar, P.O. Kothi, Tehsil Ghumarwin, Distt. Bilaspur, H.P.

..Respondents.

Appeal u/s 14 of the H.P. Land Revenue Act against the order dated 27-02-2009 passed by the Ld. A.C. 2nd Grade Ghumarwin, Distt. Bilaspur, H.P. *vide* which the Ld. A.C. 2nd Grade has sanctioned the mutation No. 1986 in favour of the appellant No.1 deceased Madan Lal father of the appellants No. 2 & 3 and respondents of the immoveable property of deceased Bhagwana Ram.

Notice to the respondent.—

Whereas in the above noted case it has been proved to the satisfaction of the Court that the respondent No. 2, resident of Vill. Tikkar, P.O. Kothi, Tehsil Ghumarwin, Distt. Bilaspur, H.P. cannot be served in an ordinary way. Hence this proclamation notice is hereby issued against them to appear in this court on 05-10-2024 at 2.00 PM to defend the case personally or through pleader failing which *ex parte* proceedings will be taken against them.

Given Under my hand and the seal of this Court.

Seal.

Sd/-

*Sub-Divisional Collector,
Ghumarwin, Distt. Bilaspur, H.P.*

**In the Court of Sub-Divisional Magistrate-cum-Additional Registrar of Marriages,
Shri Naina Devi Ji at Swarghat, District Bilaspur, H.P.**

Ravi s/o Sh. Satpal, r/o Village Manjher, Post Office Kutehla, Tehsil Shri Naina Devi Ji, District Bilaspur, H.P.

Versus

1. General Public.
2. Pradhan GP Manjher, Tehsil Shri Naina Devi Ji at Swarghat, District Bilaspur.

Proclamation of marriage as per provision under section 8(4) and 11 of the Registration of Marriage Act, 1996.

Whereas, the above named applicant has made an application under section 8(4) and 11 of the H.P. Registration of Marriage Act, 1996 for registration of his marriage. The applicant Sh. Ravi s/o Sh. Satpal, r/o Village Manjher, Post Office Kutehla, Tehsil Shri Naina Devi Ji, District Bilaspur, H.P., hereinafter called as Bridegroom and Smt. Akansha, hereinafter called as Bride have submitted affidavits stating therein that they both have solemnized marriage with each other on 22-01-2023 as per Hindu rites and customs, but they have not registered the said marriage anywhere in India till date. The Bride Akansha is the daughter of Sh. Parme, r/o Tejpur Antwara, Khatauli, Muzaffarnagar, Uttar Pradesh and her usual place of residence is Village Manjher, Post Office Kutehla, Tehsil Shri Naina Devi Ji, District Bilaspur, H.P.

Hence, proclamation is hereby made to the respondents, general public and Gram Panchayat Manjher for inviting the objection, if any. If someone has any objection regarding registration of said marriage, he may appear in this court on or before 31-08-2024 failing which *ex-parte* proceeding will be initiated and the order of the registration of marriage will be prepared and announced.

Given under my hand and the seal of the court on dated 31-07-2024.

Seal.

Sd/-

DHARAM PAL (HAS)

*Sub-Divisional Magistrate-cum-Additional Registrar of Marriages,
Shri Naina Devi Ji at Swarghat, District Bilaspur, H.P.*

**In the Court of Sub-Divisional Magistrate-cum-Additional Registrar of Marriages,
Shri Naina Devi Ji at Swarghat, District Bilaspur, H.P.**

Navneet Kumar s/o Late Sh. Ved Prakash, r/o Ward No. 2, Town & Post Office Shri Naina Devi Ji, Tehsil Shri Naina Devi Ji, District Bilaspur, H.P.

Versus

1. General Public.
2. E.O., MC Shri Naina Devi Ji, Tehsil Shri Naina Devi Ji, District Bilaspur.

Proclamation of marriage as per provision under section 8(4) and 11 of the Registration of Marriage Act, 1996.

Whereas, the above named applicant has made an application under section 8(4) and 11 of the H.P. Registration of Marriage Act, 1996 for registration of his marriage. The applicant

Sh. Navneet Kumar s/o Late Sh. Ved Prakash, r/o Ward No. 2, Town & Post Office Shri Naina Devi Ji, Tehsil Shri Naina Devi Ji, District Bilaspur HP, hereinafter called as Bridegroom and Smt. Neha Vashisht, hereinafter called as Bride have submitted affidavits stating therein that both they have solemnized marriage with each other on 27-04-2015 as per Hindu rites and customs, but they have not registered the said marriage anywhere in India till date. The Bride Neha Vashisht is the daughter of Late Sh. Yash Pal, r/o Village Bharolian Kalan, Post Office Behdala, Tehsil & District Una, H.P. and her usual place of residence is Ward No.2, Post Office Shri Naina Devi Ji, Tehsil Shri Naina Devi Ji, District Bilaspur, H.P.

Hence, proclamation is hereby made to the respondents, general public and Municipal Council for inviting the objection, if any. If someone has any objection regarding registration of said marriage, he may appear in this court on or before 02-09- 2024 failing which *ex-parte* proceeding will be initiated and the order of the registration of marriage will be prepared and announced.

Given under my hand and the seal of the court on dated 01-08-2024.

Seal.

Sd/-

DHARAM PAL (HAS)
Sub-Divisional Magistrate-cum-Additional Registrar of Marriages,
Shri Naina Devi Ji at Swarghat, District Bilaspur, H.P.

ब अदालत कार्यकारी दण्डाधिकारी, तहसील सैंज, जिला कुल्लू, हिमाचल प्रदेश

मिसल नं० : 58 / 2024

तारीख मरजुआ : 31-08-2024

आगामी पेशी 30-09-2024

श्री गिरधारी लाल पुत्र श्री चुनी लाल, निवासी गांव अप्पर नहीं, डा० सुचैहण, तहसील सैंज, जिला कुल्लू (हिंप्र०)

बनाम

आम जनता

विषय.—पंचायत रिकार्ड में मृत्यु दर्ज करने बारे।

नोटिस बनाम आम जनता।

श्री गिरधारी लाल पुत्र श्री चुनी लाल, निवासी गांव अप्पर नहीं, डा० सुचैहण, तहसील सैंज, जिला कुल्लू (हिंप्र०) ने प्रार्थना—पत्र इस न्यायालय में इस आशय से प्रस्तुत किया है कि प्रार्थी की दादी श्रीमती हरी देवी की मृत्यु दिनांक 11-05-2005 को हो चुकी है। प्रार्थी के अन्य सदस्य भी श्रीमती हरी देवी की मृत्यु की तिथि को ग्राम पंचायत सुचैहण के रिकार्ड में गलती से दर्ज नहीं करवा सके। अब प्रार्थी अपनी दादी श्रीमती हरी देवी की मृत्यु तिथि पंचायत रिकार्ड सुचैहण में दर्ज करवाना चाहता है। प्रार्थी ने अपने प्रार्थना—पत्र के समर्थन में आधार प्रति, शपथ—पत्र साथ संलग्न प्रस्तुत कर रखा है।

अतः आम जनता को इस इश्तहार द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति आम या खास को उपरोक्त मृत्यु तिथि दर्ज करने बारे कोई उजर/एतराज हो तो वह दिनांक 30-09-2024 को असालतन या वकालतन प्रातः 11.00 बजे अधोहस्ताक्षरी के कार्यालय में हाजिर होकर अपना एतराज लिखित या मौखिक पेश कर सकता है। बसूरत गैरहाजिरी में एकतरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 31-08-2024 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
तहसील सैंज, जिला कुल्लू (हि०प्र०)।

ब अदालत कार्यकारी दण्डाधिकारी, तहसील मनाली, जिला कुल्लू (हि०प्र०)

श्रीमती नारदू देवी पुत्री श्री खेरु राम, निवासी गांव व डा० वरुआ, तहसील मनाली, जिला कुल्लू हिमाचल प्रदेश।

बनाम

आम जनता

विषय.— प्रकाशन इश्तहार बाबत जन्म तिथि दर्ज करने बारे।

नोटिस बनाम आम जनता।

श्रीमती नारदू देवी पुत्री श्री खेरु राम, निवासी गांव व डा० वरुआ, तहसील मनाली जिला कुल्लू हिमाचल प्रदेश ने इस न्यायालय में अपनी जन्म तिथि दर्ज करने बारे आवेदन पत्र, मय शपथ पत्र गुजारा है कि उसका जन्म तिथि 01-03-1974 को हुआ है। परन्तु ग्राम पंचायत वरुआ के जन्म व मृत्यु पंजीकरण अभिलेख में दर्ज नहीं है। जिसे अब वह दर्ज करवाना चाहते हैं। इस बावत मुख्य चिकित्सा अधिकारी कुल्लू ग्राम पंचायत वरुआ व क्षेत्रीय अभीकरणों से छानबीन करवाई गई तथा पाया गया कि श्रीमती नारदू देवी पुत्री श्री खेरु राम की जन्म तिथि 01-03-1974 है तथा जन्म तिथि दर्ज करने बारे सिफारिश की गई है।

अतः सर्वसाधारण को इस इश्तहार द्वा सूचित किया जाता है कि श्रीमती नारदू देवी पुत्री श्री खेरु राम की जन्म तिथि दर्ज करवाने बारे आपत्ति हो तो वह दिनांक 11-10-2024 को या इससे पूर्व अदालत हजा में अपनी आपत्ति दर्ज करवा सकता है। इसके उपरान्त कोई भी उजर/एतराज मान्य नहीं होगा तथा नियमानुसार ग्राम पंचायत वरुआ के अभिलेख में जन्म तिथि दर्ज करने के आदेश पारित कर दिये जाएंगे।

आज दिनांक 07-09-2024 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
तहसील मनाली, जिला कुल्लू (हि०प्र०)।

ब अदालत कार्यकारी दण्डाधिकारी, तहसील मनाली, जिला कुल्लू (हि०प्र०)

श्री राहुल ठाकुर पुत्र प्रेम सिंह, मूल निवासी नेपाल हाल निवासी गांव रांघड़ी, डा० व तहसील मनाली जिला कुल्लू हिमाचल प्रदेश।

बनाम

आम जनता

विषय.— प्रकाशन इश्तहार बाबत जन्म तिथि दर्ज करने वारे।

नोटिस बनाम आम जनता।

श्री राहुल ठाकुर पुत्र प्रेम सिंह, मूल निवासी नेपाल हाल निवासी गांव रांघडी, डा० व तहसील मनाली जिला कुल्लू हिमाचल प्रदेश ने इस न्यायालय में अपनी जन्म तिथि दर्ज करने वारे आवेदन पत्र, मय शपथ पत्र गुजारा है कि उसका जन्म तिथि 21-10-2004 को हुआ है। परन्तु ग्राम पंचायत नसोगी के जन्म व मृत्यु पंजीकरण अभिलेख में दर्ज नहीं है। जिसे अब वह दर्ज करवाना चाहता है। इस बाबत मुख्य चिकित्सा अधिकारी कुल्लू ग्राम पंचायत नसोगी व क्षेत्रीय अभिकरणों से छानबीन करवाई गई तथा पाया गया कि श्री राहुल ठाकुर पुत्र प्रेम सिंह की जन्म तिथि 21-10-2004 है तथा जन्म तिथि दर्ज करने वारे सिफारिश की गई है।

अतः सर्वसाधारण को इस इश्तहार द्वारा सूचित किया जाता है कि श्री राहुल ठाकुर पुत्र प्रेम सिंह की जन्म तिथि दर्ज करवाने वारे आपत्ति हो तो वह दिनांक 11-10-2024 को या इससे पूर्व अदालत हजा में अपनी आपत्ति दर्ज करवा सकता है। इसके उपरान्त कोई भी उजर/एतराज मान्य नहीं होगा तथा नियमानुसार ग्राम पंचायत नसोगी के अभिलेख में जन्म तिथि दर्ज करने के आदेश पारित कर दिये जाएंगे।

आज दिनांक 07-09-2024 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
तहसील मनाली, जिला कुल्लू (हि०प्र०)।

ब अदालत कार्यकारी दण्डाधिकारी, तहसील मनाली, जिला कुल्लू (हि०प्र०)

कुमारी आंचल पुत्री प्रेम सिंह, मूल निवासी नेपाल हाल निवासी गांव रांघडी, डा० व तहसील मनाली जिला कुल्लू हिमाचल प्रदेश।

बनाम

आम जनता

विषय.— प्रकाशन इश्तहार बाबत जन्म तिथि दर्ज करने वारे।

नोटिस बनाम आम जनता।

कुमारी आंचल पुत्री प्रेम सिंह, मूल निवासी नेपाल हाल निवासी गांव रांघडी, डा० व तहसील मनाली जिला कुल्लू हिमाचल प्रदेश ने इस न्यायालय में अपनी जन्म तिथि दर्ज करने वारे आवेदन पत्र, मय शपथ पत्र गुजारा है कि उसका जन्म तिथि 30-06-2003 को हुआ है। परन्तु ग्राम पंचायत नसोगी के जन्म व मृत्यु पंजीकरण अभिलेख में दर्ज नहीं है। जिसे अब वह दर्ज करवाना चाहती है। इस बाबत मुख्य चिकित्सा अधिकारी कुल्लू ग्राम पंचायत नसोगी व क्षेत्रीय अभिकरणों से छानबीन करवाई गई तथा पाया गया कि कुमारी आंचल पुत्री प्रेम सिंह की जन्म तिथि 30-06-2003 है तथा जन्म तिथि दर्ज करने वारे सिफारिश की गई है।

अतः सर्वसाधारण को इस इश्ताहार द्वारा सूचित किया जाता है कि कुमारी आंचल पुत्री प्रेम सिंह की जन्म तिथि दर्ज करवाने बारे आपत्ति हो तो वह दिनांक 11-10-2024 को या इससे पूर्व अदालत हजा में अपनी आपत्ति दर्ज करवा सकता है। इसके उपरान्त कोई भी उजर/एतराज मान्य नहीं होगा तथा नियमानुसार ग्राम पंचायत नसोगी के अभिलेख में जन्म तिथि दर्ज करने के आदेश पारित कर दिये जाएंगे।

आज दिनांक 07-09-2024 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
तहसील मनाली, जिला कुल्लू (हि०प्र०)।

ब अदालत कार्यकारी दण्डाधिकारी, तहसील मनाली, जिला कुल्लू (हि०प्र०)

श्री राज कुमार पुत्र श्री सुरजा बहादुर, मूल निवासी नेपाल हाल निवासी गांव डा० बांहग, तहसील मनाली जिला कुल्लू, हिमाचल प्रदेश।

बनाम

आम जनता

विषय.— प्रकाशन इश्तहार बाबत जन्म तिथि दर्ज करने बारे।

नोटिस बनाम आम जनता।

श्री राज कुमार पुत्र श्री सुरजा बहादुर, मूल निवासी नेपाल हाल निवासी गांव डा० बांहग, तहसील मनाली जिला कुल्लू, हिमाचल प्रदेश ने इस न्यायालय में अपने पुत्र अंकुश सुनार की जन्म तिथि पंजीकरण करने बारे आवेदन पत्र, मय शपथ पत्र गुजारा है कि अंकुश सुनार का जन्म दिनांक 30-08-2020 को हुआ है परन्तु ग्राम पंचायत बांहग के जन्म व मृत्यु पंजीकरण अभिलेख में दर्ज नहीं है। जिसे अब वह दर्ज करवाना चाहता है। इस बाबत मुख्य चिकित्सा अधिकारी कुल्लू ग्राम पंचायत बांहग व क्षेत्रीय अभिकरणों से छातबीन करवाई गई तथा पाया गया कि अंकुश सुनार पुत्र राज कुमार की जन्म तिथि 30-08-2020 है तथा जन्म तिथि दर्ज करने बारे सिफारिश की गई है।

अतः सर्वसाधारण को इस इश्ताहार द्वारा सूचित किया जाता है कि अंकुश सुनार पुत्र राज कुमार की जन्म तिथि दर्ज करवाने बारे आपत्ति हो तो वह दिनांक 11-10-2024 को या इससे पूर्व अदालत हजा में अपनी आपत्ति दर्ज करवा सकता है। इसके उपरान्त कोई भी उजर/एतराज मान्य नहीं होगा तथा नियमानुसार ग्राम पंचायत बांहग के अभिलेख में जन्म तिथि दर्ज करने के आदेश पारित कर दिये जाएंगे।

आज दिनांक 07-09-2024 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
तहसील मनाली, जिला कुल्लू (हि०प्र०)।

श्री कमल पुत्र श्री जय बहादुर, मूल निवासी नेपाल हाल निवासी c/o कंचन बाला हाऊस नं० 78, वार्ड नं० 3, लोअर दाना बाजार मनाली, तहसील मनाली, जिला कुल्लू, हिमाचल प्रदेश।

बनाम

आम जनता

विषय.— प्रकाशन इश्तहार बाबत जन्म तिथि दर्ज करने बारे।

नोटिस बनाम आम जनता।

श्री कमल पुत्र श्री जय बहादुर, मूल निवासी नेपाल हाल निवासी c/o कंचन बाला हाऊस नं० 78, वार्ड नं० 3, लोअर दाना बाजार मनाली, तहसील मनाली, जिला कुल्लू, हिमाचल प्रदेश ने इस न्यायालय में अपनी जन्म तिथि पंजीकरण करने बारे आवेदन पत्र, मय शपथ पत्र गुजारा है कि उसका जन्म दिनांक 18-02-2000 को हुआ है। परन्तु नगर परिषद मनाली के जन्म व मृत्यु पंजीकरण अभिलेख में दर्ज नहीं है। जिसे अब वह दर्ज करवाना चाहो है। इस बाबत मुख्य चिकित्सा अधिकारी कुल्लू नगर परिषद मनाली व क्षेत्रीय अभिकरणों से छातबीन करवाई गई तथा पाया गया कि श्री कमल पुत्र श्री जय बहादुर की जन्म तिथि 18-02-2000 है तथा जन्म तिथि दर्ज करने बारे सिफारिश की गई है।

अतः सर्वसाधारण को इस इश्तहार द्वारा सूचित किया जाता है कि श्री कमल पुत्र श्री जय बहादुर की जन्म तिथि दर्ज करवाने बारे आपत्ति हो तो वह दिनांक 11-10-2024 को या इससे पूर्व अदालत हजा में अपनी आपत्ति दर्ज करवा सकता है। इसके उपरान्त कोई भी उजर/एतराज मान्य नहीं होगा तथा नियमानुसार नगर परिषद मनाली के अभिलेख में जन्म तिथि दर्ज करने के आदेश पारित कर दिये जाएंगे।

आज दिनांक 07-09-2024 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
तहसील मनाली, जिला कुल्लू (हि०प्र०)।

CHANGE OF NAME

I, Rekha Devi w/o Late Sh. Devender Singh, r/o Village Doon, P.O. Bhuira, Tehsil Rajgarh, District Sirmaur (H.P.) declare that my real name is Rekha Devi in Adhaar Card & school records. My name has been wrongly entered as Rekha Pundir in my husband's Navy Service records. My name should be corrected as Rekha Devi in my husband's Navy Service records. All concerned may please note.

REKHA DEVI
w/o Late Sh. Devender Singh,
r/o Village Doon, P.O. Bhuira,
Tehsil Rajgarh, District Sirmaur (H.P.).

CHANGE OF NAME

I, Jaan Kumari w/o Sh. Vishnu Bhadur, r/o Nitin Niwas, Sunny Side, Solan (T), Solan (H.P.) have changed my name from Jaan Kumari to Gita Devi.

JAAN KUMARI
*w/o Sh. Vishnu Bhadur,
r/o Nitin Niwas, Sunny Side,
Solan (T), Solan (H.P.).*

CHANGE OF NAME

I, Kala Devi w/o Sh. Rajesh Chand Chauhan aged about 42 years, r/o V.P.O. Danda Anj, Tehsil Paonta Sahib, District Sirmaur (H.P.) declare that I have changed my name from Kala Devi (Previous Name) to Kala Chauhan (New Name). All concerned please may note.

KALA DEVI
*w/o Sh. Rajesh Chand Chauhan,
r/o V.P.O. Danda Anj, Tehsil Paonta Sahib,
District Sirmaur (H.P.).*

CHANGE OF NAME

I, Preeti (New Name) d/o Shyam Lal and w/o Aman, r/o Bangala Colony, Totu, Tehsil and District Shimla (H.P.) declare that I have changed my name from Priya (Previous Name) to Preeti (New Name). All concerned please may note.

PREETI
*d/o Shyam Lal and w/o Aman,
r/o Bangala Colony, Totu,
Tehsil and District Shimla (H.P.).*

CHANGE OF NAME

I, Babli Sharma w/o Sh. Amar Sharma, r/o Village Jol, Tehsil Bangana, Distt. Una (H.P.) have changed my name to Babli Devi for all purposes.

BABLI SHARMA
*w/o Sh. Amar Sharma,
r/o Village Jol,
Tehsil Bangana, Distt. Una (H.P.).*

नाम परिवर्तन

मैं, छेरयुम डोलमा पत्नी स्व0 श्री राजन सिंह, गांव व डा0 पांगी, तहसील कल्पा, जिला किन्नौर (हिं0प्र0) यह घोषणा करती हूं कि मेरा नाम आधार कार्ड नं0 5201 1956 2331 में धेरयुम डोलमा दर्ज है जोकि गलत है। मेरा सही नाम पंचायत परिवार रजिस्टर नकल में छेरयुम डोलमा दर्ज है। संबंधित रिकार्ड में दर्ज किया जाए।

छेरयुम डोलमा
पत्नी स्व0 श्री राजन सिंह,
गांव व डा0 पांगी, तहसील कल्पा,
जिला किन्नौर (हिं0प्र0)।